

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

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JENSEN v. BAYFIELD COUNTY

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Page 1	Page 3
<p>IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN</p> <p>-----</p> <p>TRISTAN JENSEN Plaintiff,</p> <p>-VS- Case No. 20-CV-997-bbc</p> <p>BAYFIELD COUNTY SHERIFF PAUL SUSIENKA ANTHONY BUDREAU ERIC SWAN</p> <p>Defendants.</p> <p>-----</p> <p>* * * * *</p> <p>DEPOSITION OF ERIC SWAN TAKEN ON THE 7TH DAY OF FEBRUARY, 2022 11:03 A.M. REMOTELY VIA ZOOM</p> <p>* * * * *</p> <p>Taken before Terri A. Stacken, RPR</p> <p>www.nwcourtreporters.com nwcrr@nwcourtreporters.com 1-800-628-7551</p>	<p>1 INDEX</p> <p>2</p> <p>3 EXAMINATION Page</p> <p>4 of Eric Swan</p> <p>5 By Ms. Jacobs 4</p> <p>6 By Mr. Lindsey 49</p> <p>7</p> <p>8</p> <p>9</p> <p>10 OBJECTIONS</p> <p>11 By Mr. Lindsey 32,38</p> <p>12 By Mr. Gross 60,62,63,70</p> <p>13 By Ms. Jacobs 60,61,63</p> <p>14</p> <p>15</p> <p>16 EXHIBITS</p> <p>17 No. 3 Red Cliff Incident Report Form</p> <p>18</p> <p>19</p> <p>20</p> <p>21 (Original exhibit was attached to</p> <p>22 original transcript and copies furnished</p> <p>23 to counsel)</p> <p>24</p> <p>25</p>
Page 2	Page 4
<p>1 APPEARANCES:</p> <p>2</p> <p>3 MAX T. LINDSEY, of the firm of ANICH WICKMAN</p> <p>4 & LINDSEY, S.C., 220 Sixth Avenue West, Ashland,</p> <p>5 Wisconsin 54806, appeared remotely via Zoom</p> <p>6 representing the Plaintiff.</p> <p>7 JERILYN JACOBS, of the firm of CRIVELLO</p> <p>8 CARLSON, S.C., 7 South Dewey Street, Suite 120,</p> <p>9 Eau Claire, Wisconsin 54701, appeared remotely</p> <p>10 via Zoom representing the Defendants Bayfield</p> <p>11 County, Paul Susienka and Anthony Budreau.</p> <p>12 BLAKE GROSS, of the LAW OFFICE OF BLAKE</p> <p>13 GROSS, LTD., 106 Main Street West, Ashland,</p> <p>14 Wisconsin 54806, appeared remotely via Zoom</p> <p>15 representing the Witness.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 ERIC SWAN,</p> <p>2 after having been first duly sworn on oath by</p> <p>3 Terri Stacken deposes and says as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MS. JACOBS:</p> <p>6 Q Good morning, Officer Swan.</p> <p>7 A Good morning.</p> <p>8 Q My name is Jerilyn Jacobs. We've never met, but</p> <p>9 I am the attorney -- one of the attorneys here</p> <p>10 that represents Sergeant Budreau and Sheriff</p> <p>11 Susienka in the lawsuit brought by Tristan Jensen</p> <p>12 against them and then against you as well.</p> <p>13 Can you please state your name for the</p> <p>14 record?</p> <p>15 A Eric Swan.</p> <p>16 Q So most of what I'm going to do today, I'm going</p> <p>17 to ask you some background questions, focus a</p> <p>18 large -- the majority of my questions on what</p> <p>19 transpired at the Jensen-Washeleski residence on</p> <p>20 the evening of February 25th, 2019. We have a</p> <p>21 copy of your report.</p> <p>22 MS. JACOBS: Blake, do you have a copy</p> <p>23 of Officer Swan's Incident Report from that</p> <p>24 night?</p> <p>25 MR. GROSS: We do. Just a second and</p>

Pages 1 to 4

<p style="text-align: right;">Page 5</p> <p>1 I'll go grab it.</p> <p>2 MR. LINDSEY: Just for the record, this</p> <p>3 is Attorney Lindsey. I was going to stop my</p> <p>4 camera just so that I don't distract from the</p> <p>5 initial questioning. I am here, and I will</p> <p>6 advise if I have any input.</p> <p>7 Is that okay with everyone?</p> <p>8 MS. JACOBS: That's fine, with the</p> <p>9 addition of if you do leave or if anybody</p> <p>10 comes in your office, treat it as we're all</p> <p>11 in the same deposition room and let the court</p> <p>12 reporter know so she can make a notation.</p> <p>13 MR. LINDSEY: Yes.</p> <p>14 MR. GROSS: I'm back.</p> <p>15 Q (By Ms. Jacobs, continuing) So as I mentioned, a</p> <p>16 lot of the questions, we'll go through that</p> <p>17 evening, we'll walk through your report, and I'll</p> <p>18 just ask some training questions and things</p> <p>19 regarding that, so that's what I anticipate what</p> <p>20 this will be about.</p> <p>21 Can you tell me who your current employer</p> <p>22 is?</p> <p>23 A The Red Cliff Police Department.</p> <p>24 Q And how long have you been with the Red Cliff</p> <p>25 Police Department?</p>	<p style="text-align: right;">Page 7</p> <p>1 A Clear Lake.</p> <p>2 Q Yeah.</p> <p>3 A I was the chief for about six years. I was an</p> <p>4 officer prior to that.</p> <p>5 Q And then how long were you with the Hillsboro,</p> <p>6 Wisconsin, Police Department?</p> <p>7 A About two years.</p> <p>8 Q Is that the time that you underwent, if you did</p> <p>9 undergo, any law enforcement academy training for</p> <p>10 Wisconsin?</p> <p>11 A Yes, I did.</p> <p>12 Q And can you just briefly tell me about what that</p> <p>13 entailed?</p> <p>14 A I've been through the entire recruit school or</p> <p>15 police academy in Wisconsin. It includes</p> <p>16 learning basic law enforcement, learning about</p> <p>17 the statutes, how to read them, how to interpret</p> <p>18 them, how to apply them, learn about traffic</p> <p>19 enforcement, impaired driving enforcement, use of</p> <p>20 force, emergency driving, firearms, anything that</p> <p>21 I would do as a police officer. Investigations,</p> <p>22 report writing. The basics to get started in the</p> <p>23 business.</p> <p>24 Q Okay. And since that time you've had ongoing</p> <p>25 training throughout your 15-plus years or more in</p>
<p style="text-align: right;">Page 6</p> <p>1 A I'm coming up on four years.</p> <p>2 Q Is this your first job in law enforcement?</p> <p>3 A No.</p> <p>4 Q Where did you -- can you give me just a brief</p> <p>5 history of your law enforcement history?</p> <p>6 A I started my first law enforcement job in 1981 in</p> <p>7 Davenport, Iowa. I was a police officer in</p> <p>8 Hillsboro, Wisconsin. I was the police chief for</p> <p>9 the Village of Clear Lake. I was a deputy for</p> <p>10 the Polk County Sheriff's Department. I was the</p> <p>11 detective of sensitive crimes investigator for</p> <p>12 the Lac Courte Oreilles Tribal Police Department.</p> <p>13 And currently a police officer for the Red Cliff</p> <p>14 Police Department.</p> <p>15 Q Did you provide me those employers in order of</p> <p>16 which the employment occurred?</p> <p>17 A Yes.</p> <p>18 Q How long were you a detective at the Lac Courte</p> <p>19 Oreilles office?</p> <p>20 A About four years.</p> <p>21 Q And how long were you with the Polk County</p> <p>22 Sheriff's Office?</p> <p>23 A About six years.</p> <p>24 Q How long were you the police chief at, I have</p> <p>25 Clear?</p>	<p style="text-align: right;">Page 8</p> <p>1 Wisconsin?</p> <p>2 A Yes.</p> <p>3 Q Present and up-to-date with all training</p> <p>4 requirements?</p> <p>5 A Yes.</p> <p>6 Q What brought you to the Red Cliff Police</p> <p>7 Department?</p> <p>8 A I was working in the Wisconsin Department of</p> <p>9 Corrections prison system and missed working the</p> <p>10 road and wanted to get out of the prison system.</p> <p>11 I had -- I thought the Red Cliff area was a</p> <p>12 beautiful area. It was a small department that I</p> <p>13 could grow with.</p> <p>14 Q And what is your present title?</p> <p>15 A Police officer.</p> <p>16 Q How big is the police department?</p> <p>17 A Including the chief, there's six full-time</p> <p>18 staff.</p> <p>19 Q Taking you back to February 2019, same title</p> <p>20 then, police officer?</p> <p>21 A Yes.</p> <p>22 Q And staff still six at that time?</p> <p>23 A I don't recall. Our staffing has fluctuated over</p> <p>24 the last four years. We've had as low as three</p> <p>25 officers and as many as six full-time and one</p>

<p style="text-align: right;">Page 9</p> <p>1 part-time.</p> <p>2 Q Is it fair to say, just offhand, you don't recall</p> <p>3 what the staffing was three years ago in February</p> <p>4 2019?</p> <p>5 A I can only say that I normally work by myself.</p> <p>6 Q Okay. Fair enough. So I want to take you</p> <p>7 through the events of a call that happened that</p> <p>8 occurred on February 25th, 2019.</p> <p>9 We'll walk through your Incident Report, but</p> <p>10 first I wanted to ask you if you had any just</p> <p>11 recollections on your own of that -- well, you</p> <p>12 might have had many calls that day -- but of a</p> <p>13 call that you did to the Jensen household?</p> <p>14 A I recall responding to that call.</p> <p>15 Q Do you remember when it was, if it was early in</p> <p>16 your shift, it was late in your shift?</p> <p>17 A Well, it was late evening, maybe a third of the</p> <p>18 way through my shift.</p> <p>19 Q Do you remember if you had any calls before then?</p> <p>20 A I don't recall the call volume.</p> <p>21 Q Certainly nothing that was memorable and likely</p> <p>22 of the magnitude of the Jensen response?</p> <p>23 A Nothing related.</p> <p>24 Q Do you recall anything about the call coming</p> <p>25 in?</p>	<p style="text-align: right;">Page 11</p> <p>1 scene.</p> <p>2 Q I was trying to say it without trying to label</p> <p>3 any kind of criminal finding on them. I'm just</p> <p>4 trying to think of the way to best characterize</p> <p>5 individuals.</p> <p>6 Were you aware of -- what were you aware of</p> <p>7 in terms of -- just strike that. This is</p> <p>8 horrible.</p> <p>9 So when you got there, describe the nature</p> <p>10 of the house. Is it one level? Two levels?</p> <p>11 A I would describe it as a split-level home.</p> <p>12 Q Do you know if anybody was in the downstairs</p> <p>13 portion?</p> <p>14 A I didn't know that when I first arrived.</p> <p>15 Q Okay. And when you first arrived, where did you</p> <p>16 go to?</p> <p>17 A I was -- I came in the front door and met the</p> <p>18 male at the front door.</p> <p>19 Q And did the male provide you information as to</p> <p>20 where people were?</p> <p>21 A Yes.</p> <p>22 Q And what information did he provide you?</p> <p>23 A He told me that there was someone by the name of</p> <p>24 Tristan was downstairs. And there were, I</p> <p>25 believe he said there were three females upstairs</p>
<p style="text-align: right;">Page 10</p> <p>1 A Yes.</p> <p>2 Q And where were you at that time?</p> <p>3 A I don't recall.</p> <p>4 Q What do you recall about the call coming in?</p> <p>5 A I remember it being dispatched as a physical</p> <p>6 domestic with reported injuries.</p> <p>7 Q Do you remember if you were first on scene?</p> <p>8 A I was.</p> <p>9 Q And what was the state of things when you got</p> <p>10 there?</p> <p>11 A A little chaotic is a word that comes to mind.</p> <p>12 Q Do you remember there being a number of people</p> <p>13 there?</p> <p>14 A There was one, one male. There were, I believe</p> <p>15 there were four females.</p> <p>16 Q And when you have a domestic call like that, I'm</p> <p>17 understanding you can't attach, at least at the</p> <p>18 time you wouldn't be able to attach a name with</p> <p>19 the person. Like I could talk about Tristan</p> <p>20 Jensen, but at that time you didn't know the</p> <p>21 names of anybody perhaps.</p> <p>22 When you have something like that do you</p> <p>23 usually think of one as a perpetrator and another</p> <p>24 as a victim?</p> <p>25 A I don't know who's who until I talk to people on</p>	<p style="text-align: right;">Page 12</p> <p>1 who had been battered or attacked or assaulted.</p> <p>2 I don't remember the exact words he used.</p> <p>3 Q What did you do then?</p> <p>4 A I don't recall offhand if I went upstairs and</p> <p>5 took a look first or if I went downstairs.</p> <p>6 I think I went upstairs first and talked to</p> <p>7 a couple of the females upstairs to find out</p> <p>8 basically what was going on.</p> <p>9 Q At that point, and I know a lot of this happened</p> <p>10 three years ago and I'm asking a lot of details</p> <p>11 at this point, and we will go through your</p> <p>12 report.</p> <p>13 Do you have a recollection at all if the</p> <p>14 person who was downstairs, if you could hear her,</p> <p>15 if she was being loud enough that you could hear</p> <p>16 her while being upstairs?</p> <p>17 A No. I didn't know there was somebody downstairs</p> <p>18 until I was told.</p> <p>19 Q Okay. At some point did you go downstairs?</p> <p>20 A Yes.</p> <p>21 Q And why did you go downstairs?</p> <p>22 A I was told that the aggressor or the attacker,</p> <p>23 the person who was physically violent is the best</p> <p>24 way that I can describe it, was downstairs.</p> <p>25 Q And what did you encounter when you went</p>

1 downstairs?

2 A Initially, I didn't find anyone. It was dark
3 downstairs. I couldn't see very well without
4 using my flashlight initially, and it was quiet
5 other than me shouting and announcing my voice
6 multiple times, announcing who I was and asking
7 the person to come out.

8 **Q And where were you asking the person to come out**
9 **from?**

10 A I didn't know where they were coming from. I was
11 just -- I was told that that person was in the
12 basement, and I was trying to find out where that
13 person was and was a little nervous because I
14 didn't know where they were.

15 **Q So you were calling out in general wanting that**
16 **person to announce themselves?**

17 A Yes.

18 **Q Do you recall how many rooms or what the layout**
19 **at all was like downstairs?**

20 A I would call them bedrooms, a couple bedrooms
21 downstairs, and a utility room. There was a
22 bathroom straight ahead as I went down the stairs
23 and across the basement.

24 I don't recall more details than that as far
25 as what each room was for.

1 **Q Did you get a response to your calling out to**
2 **have the person identify themselves or announce**
3 **themselves?**

4 A Eventually.

5 **Q And how did that person respond?**

6 A I recall a number of expletives. A number of, I
7 call them F-bombs, directed towards me.

8 **Q Did they say where they were or could you tell**
9 **where the voice was coming from?**

10 A It sounded like the voice was coming from
11 straight ahead from the bathroom.

12 **Q And what did you do then?**

13 A I continued to order that person to come out of
14 there so I could see them.

15 **Q And did the person come out?**

16 A Eventually, but not on their own.

17 **Q So in between telling that person to come out and**
18 **that person eventually coming out, what**
19 **happened?**

20 A Well, that person was demanding that I give them
21 a cigarette, and they were telling me to go away
22 and leave. They were making it very clear that
23 they were not going to cooperate and they were
24 not going to come out voluntarily or
25 cooperatively.

1 **Q Was that a scenario at all that you had covered**
2 **at any point during your law enforcement**
3 **training?**

4 A Yes.

5 **Q And what have you been taught to do in that**
6 **situation?**

7 A Try starting out with verbal commands, asking the
8 person, directing the person, and trying to
9 encourage them to cooperate.

10 When that doesn't work, then going to the
11 next level of force and entering the room and
12 using my presence in that room.

13 If that doesn't work, then going to hands-on
14 or chemical agents, trying to entice the person
15 to cooperate.

16 **Q At that point were you still the only -- at that**
17 **point were you the only officer on the scene?**

18 A Yes, at least I was the only person in the house.
19 If anyone had arrived outside, I was not aware of
20 it, but I was the only person inside the
21 residence.

22 **Q Understood. You started with verbal commands,**
23 **ask the person, direct them.**

24 **Did you do that in this instance?**

25 A I did.

1 **Q And were those efforts successful in gaining the**
2 **individual's cooperation?**

3 A No. I just got several nasty return comments.

4 **Q At that point could you assess an understanding**
5 **of whether or not that individual had been**
6 **drinking alcohol?**

7 A I didn't know for certain. I was beginning to
8 suspect that. I had not yet had a face-to-face
9 contact yet.

10 **Q So the next line is to try to enter the room and**
11 **use your physical presence.**

12 **Did you attempt to do that?**

13 A I did.

14 **Q And was that successful in gaining the**
15 **individual's cooperation?**

16 A Well, it was a step in that direction. I got the
17 door partially open, and then that subject inside
18 slammed the door on my arm and pinned my arm in
19 the door.

20 **Q You said your arm was pinned in the door?**

21 A My forearm was.

22 **Q Which arm? If you recall.**

23 A My left arm.

24 **Q I imagine that wasn't a comfortable feeling?**

25 A No. It was painful.

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 17

1 **Q What happened after that?**

2 A I was still giving verbal commands for that
3 person to cooperate and stop pushing on the door,
4 and I used my foot to wedge against the door and
5 try and force the door open enough to get my arm
6 untrapped.

7 I was then able to get my upper arm in
8 through the door so I could use my shoulder
9 rather than my forearm to try and block the door
10 from being slammed shut any further.

11 **Q Did you have anything in your hand at that**
12 **time?**

13 A Initially, no.

14 **Q And when you were trapped, your forearm was**
15 **trapped, you retracted that, then did you put**
16 **your arm in again with your arm not containing**
17 **anything, or did you grab something after,**
18 **immediately after you could pull your arm back**
19 **after your forearm had been trapped?**

20 A When I was able to get my forearm freed, I
21 retracted that partially while sliding in my
22 elbow, upper arm, shoulder area to block the
23 door.

24 Eventually, I placed a can of OC pepper
25 spray in my left hand, but I was still outside

Page 19

1 door and into my arm. Basically slamming her
2 body against the door, so was not just holding
3 the door, but was striking me with it.

4 **Q Putting much more pressure on it?**

5 A Yes.

6 **Q And your arm is still trapped in there?**

7 A Yes.

8 **Q What happened next?**

9 A I warned her that if she did not come out or did
10 not stop resisting, I told her that she was being
11 detained at that point, and if she didn't stop
12 resisting, I would use pepper spray on her, and I
13 then did that.

14 **Q Did she make any verbal response in between the**
15 **time you said you would use pepper spray or**
16 **warned her you would use pepper spray and the**
17 **time that you did deploy the pepper spray?**

18 A There was just a lot of expletives, a lot of fuck
19 yous coming from her towards me, and making it
20 very clear that she was not about to cooperate
21 with me.

22 **Q Physically was she still bracing herself against**
23 **the bathtub and pressing against the door?**

24 A Yes.

25 **Q So in your report you state that you -- give me**

Page 18

1 the room at that time.

2 **Q Your arm was still outside the room at that**
3 **time?**

4 A Well, my hand, my hand and wrist were outside the
5 room. My elbow and my upper arm were through the
6 open doorway.

7 **Q Okay. So at like an angle, like a V? So your**
8 **elbow and forearm is in, but your hand is back in**
9 **the room with you?**

10 A My forearm is basically across my chest. Like
11 I'm doing a Pledge of Allegiance with my left
12 hand.

13 **Q Okay. And with that you were able to get your**
14 **elbow area or your upper arm into the room?**

15 A Yes.

16 **Q Into the bathroom. Okay.**

17 At that point did the person in the room
18 cooperate with you?

19 A No.

20 **Q So then what happened next?**

21 A The person in the room had actually slid down the
22 door, with her back against the door, slid down
23 to the floor and had her feet wedged up against
24 the bathtub and straightened her legs out and was
25 using her legs to push her upper body into the

Page 20

1 **just a second -- that you dispensed a one-second**
2 **blast of OC pepper spray towards her left**
3 **shoulder; is that correct?**

4 A Yes, towards the shoulder, base of the neck area.
5 The left shoulder was the closest part of her
6 body to me at that time.

7 **Q So you were getting her profile, meaning she**
8 **wasn't looking at you straight ahead.**

9 You were getting more of a profile view of
10 her; is that correct?

11 A I guess you'd have to describe what you mean by
12 profile view.

13 **Q Sure. You see the side -- well, let me walk**
14 **through this. Let me break this down for you.**

15 So could you see her at that point? Could
16 you look in the crack of the door and actually
17 see where she was?

18 A I could see where her lower legs were. I could
19 see parts of her as she was slamming the door
20 into me. I pushed back to take the pressure off
21 my arm and I could see parts of her.

22 And I could assume from the angle of her
23 legs where her upper body was at. And also
24 because of the pressure on the door, the door was
25 bending, so I could tell about where she was

Pages 17 to 20

1 applying the pressure at.
 2 **Q Okay. And why did you aim towards the left**
 3 **shoulder or neck area?**
 4 A Well, our training says to dispense towards the
 5 upper chest or face area, and that was the
 6 closest I could get to that without seeing her
 7 directly.
 8 **Q Do you know where the spray made contact with her**
 9 **on her body?**
 10 A I didn't know exactly at that time.
 11 **Q What happened after the initial deploy of, the**
 12 **one-second deploy of OC spray?**
 13 A I continued to verbally direct her to stop
 14 resisting, to stop pushing on the door, to come
 15 out, and that didn't happen. She did not
 16 cooperate, and she continued to slam on the
 17 door.
 18 **Q What happened next?**
 19 A After warning her, I sprayed her a second time in
 20 the same way I had the first, aiming at the same
 21 general target area, about a one-second blast or
 22 dispense again.
 23 **Q And what happened after that?**
 24 A She seemed to let off some of the pressure on the
 25 door. It was -- it seemed that either her knees

1 buckled or she started to bend her legs. It took
 2 some of the fight out of her it seemed. She
 3 seemed more like she was in more discomfort than
 4 in a fighting or combative or attacking mode.
 5 Her voice seemed to change.
 6 **Q And then were you able to enter the room at that**
 7 **point?**
 8 A I was. I was able to force the door open and get
 9 inside so that I could see her directly and see,
 10 see the results of the OC and that it was
 11 starting to -- starting to take a little fight
 12 out of her. Or seemed to.
 13 **Q Okay. You said started taking the fight out of**
 14 **her.**
 15 **Do you mean that she --**
 16 A She still wasn't cooperative. It was having an
 17 effect, but it didn't subdue her.
 18 **Q Okay. So she wasn't fully complying at that**
 19 **time?**
 20 A No.
 21 **Q To a certain degree, was she resisting?**
 22 A I'm sorry, say that again?
 23 **Q To a certain degree, was she resisting?**
 24 A Oh, yes. She had only taken some of the pressure
 25 off the door. I got in because I forced my way

1 in, not because she let me in.
 2 **Q Okay. What happened after you entered the**
 3 **bathroom?**
 4 A I got her to stand up and told her to come out of
 5 the bathroom, come out to some fresher air. We
 6 were both coughing very heavily because of the OC
 7 in the air. And she did then come out of the
 8 bathroom.
 9 **Q She walked on her own out?**
 10 A I was holding onto her right arm. She wasn't
 11 necessarily coming with me. She was just getting
 12 out of the bathroom.
 13 **Q Okay. Was the OC spray less thick immediately**
 14 **outside of the bathroom?**
 15 A Yes. Yes. The bathroom was an enclosed area.
 16 It's a small bathroom.
 17 **Q It's fair to say the bathroom smelled strongly of**
 18 **OC spray?**
 19 A Yes.
 20 **Q Did you have any chance to take a look at the**
 21 **bathroom to see if there was any towels or**
 22 **washcloths that were readily available there?**
 23 A No. I was -- my concern at that time was still
 24 safety for myself and for the subject that was
 25 fighting.

1 **Q And once the two of you entered into the, I'll**
 2 **call it a hallway area or landing area outside of**
 3 **the bathroom, what happened after that?**
 4 A I was trying to place -- or get the subject under
 5 control where I could place handcuffs on her, and
 6 she was very violently fighting back, struggling,
 7 trying to free herself, trying to get away.
 8 I eventually had to take her to a prone
 9 position, take her facedown on the floor,
 10 decentralize her, use an armbar or a front sweep,
 11 and then a compression hold to get her under
 12 control where I didn't feel that I was in danger
 13 of being harmed anymore.
 14 **Q Were you able to get her under control at that**
 15 **the point?**
 16 A Eventually. It took a little while.
 17 **Q And the point where you did have -- well, strike**
 18 **all of that.**
 19 **Did you put her in restraints and**
 20 **handcuffs?**
 21 A I did.
 22 **Q And was that -- where did you do that?**
 23 A What part of the house or what part of her body?
 24 **Q Correct. What part of the house, yes.**
 25 A In the room, the main room of the basement.

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 25	Page 27
<p>1 Outside the bathroom and where all the other</p> <p>2 rooms break off of.</p> <p>3 Q Okay.</p> <p>4 A Probably the largest room in the downstairs.</p> <p>5 Q That landing that's just beneath where the stairs</p> <p>6 is?</p> <p>7 A I'm sorry. Can you say again?</p> <p>8 Q The landing at the end of the stairs down</p> <p>9 there?</p> <p>10 A At the base of the stairs, yes. The main</p> <p>11 basement floor.</p> <p>12 Q Once she was placed in restraints, were you still</p> <p>13 the only officer down there with her?</p> <p>14 A While I was putting the handcuffs on, officers</p> <p>15 arrived, two officers arrived, and I don't</p> <p>16 remember which order they arrived in, but they</p> <p>17 arrived about the same time. But I was the only</p> <p>18 one that was in the basement.</p> <p>19 Q Did one of the officers come down to the</p> <p>20 basement? If you recall.</p> <p>21 A I don't think so. I recall being the only one in</p> <p>22 the basement and had to escort her up to the</p> <p>23 landing, to the front entrance by myself.</p> <p>24 MS. JACOBS: Attorney Gross, if you</p> <p>25 could put a copy of Officer Swan's statement</p>	<p>1 MS. JACOBS: Okay.</p> <p>2 MR. GROSS: I apologize for the delay.</p> <p>3 Just give me a second.</p> <p>4 I have the packet with Exhibits 1</p> <p>5 through 3 in it.</p> <p>6 MS. JACOBS: Yes. If you could put No.</p> <p>7 3 in front of him, if you don't mind. The</p> <p>8 first two are single pages, so if you want to</p> <p>9 flip to the third page.</p> <p>10 MR. GROSS: Here you go.</p> <p>11 Q (By Ms. Jacobs, continuing) So what's in front of</p> <p>12 you should be a seven-page document with page</p> <p>13 numbers in the lower right-hand side that</p> <p>14 indicate pages 1 through 7. Let me give you a</p> <p>15 moment so you can kind of flip through it.</p> <p>16 My question will be, is this -- can you</p> <p>17 verify that this is an Incident Report Form that</p> <p>18 you completed for the incident at the Jensen</p> <p>19 residence on February 25th, 2019?</p> <p>20 A With redactions, it does appear to be my</p> <p>21 report.</p> <p>22 Q All right. Thank you. I'd like to direct your</p> <p>23 attention to page 3 if you wouldn't mind, and we</p> <p>24 walked through a lot of what occurred.</p> <p>25 And what I'd like to have you do is at the</p>
Page 26	Page 28
<p>1 in front of him, or his Incident Report</p> <p>2 rather, in front of him. And I don't know if</p> <p>3 you've got the packet that's marked 1, 2, 3.</p> <p>4 MR. GROSS: I don't know if I have that</p> <p>5 packet, but I do have a copy of his</p> <p>6 statement.</p> <p>7 Did you email the packet?</p> <p>8 MS. JACOBS: Yes. We emailed it on</p> <p>9 Friday. It makes no difference other than if</p> <p>10 we just were working from the same copy for</p> <p>11 the court reporter's sake, but it was sent --</p> <p>12 I thought we forwarded it.</p> <p>13 MR. GROSS: I think the last thing we</p> <p>14 received from you was deposition notices.</p> <p>15 I'm still looking.</p> <p>16 MS. JACOBS: It actually came from my</p> <p>17 assistant at 4:14, so you're looking for an</p> <p>18 email from Amanda Favret.</p> <p>19 MR. GROSS: Give me a second and I'll</p> <p>20 print that out.</p> <p>21 Okay?</p> <p>22 MS. JACOBS: All right.</p> <p>23 MR. GROSS: He's got a copy of his</p> <p>24 report, but let me make sure everyone's</p> <p>25 working off the same copy.</p>	<p>1 beginning of the last paragraph, the one that</p> <p>2 starts I arrived first and alone, and go ahead</p> <p>3 and read through that until the second page, the</p> <p>4 end of that first full paragraph up until -- the</p> <p>5 last two sentences we haven't got to yet -- but</p> <p>6 if you can read all the way up through that, and</p> <p>7 my question will be if this is consistent with</p> <p>8 your memory of that evening.</p> <p>9 A (Witness complies)</p> <p>10 Q You've had an opportunity to look that over?</p> <p>11 A Yes.</p> <p>12 Q Was everything in that paragraph that starts on</p> <p>13 page 3 and carries over to page 4 consistent with</p> <p>14 your memory of that evening?</p> <p>15 A It is. It clarifies that I didn't actually go</p> <p>16 upstairs to start with. I went downstairs to</p> <p>17 deal with the primary aggressor once that person</p> <p>18 had been pointed out as such.</p> <p>19 And it also refreshed my memory that Tristan</p> <p>20 challenged me to come into the bathroom, said</p> <p>21 come and get me.</p> <p>22 And also that as we exited the bathroom, it</p> <p>23 changed from you are being detained to you are</p> <p>24 under arrest.</p> <p>25 Q We had gone through the events up until you were</p>

Pages 25 to 28

Page 29

1 able to get Ms. Jensen up to the landing area at
 2 the street level.
 3 Do you recall at that point -- I'll ask this
 4 question broader.
 5 Do you have any recollection as to when
 6 Ms. Jensen began complaining of her eyes hurting,
 7 being irritated, stinging, anything of that
 8 nature?
 9 A She was complaining in general from the moment I
 10 first sprayed her. I don't recall her talking
 11 specifically about her eyes until we were up at
 12 the front landing, the front door getting ready
 13 to go outside from that point on.
 14 Q Taking it a step back a moment, we talked about,
 15 a little bit about your training generally.
 16 What I'd like to do now is just get into a
 17 little bit, ask you a few questions about the
 18 training that you've received regarding not the
 19 deployment of OC spray, but have you ever
 20 received any training regarding decontamination
 21 or aftercare following the deployment of OC spray
 22 or a similar spray?
 23 A Yes.
 24 Q And what training have you received?
 25 A I was trained that one of the best things is to

Page 30

1 get out into fresh air, get a little bit of
 2 breeze into your eyes, try to control your
 3 breathing so you don't -- stay calm and try and
 4 relax your body so that you can get your eyes
 5 open, or force your eyes open so that air can get
 6 into your eyes.
 7 If facilities are available, get into some
 8 cooler, cold water to flush the eyes out. That
 9 helps also. But it seems that most of the
 10 opinions I've received or the training I received
 11 is that the cool air does about as good as
 12 anything, for the short-term.
 13 Eventually you want to get in the shower and
 14 get that out of your eyebrows and your hair and
 15 whatnot so it doesn't get reactivated later. But
 16 initially, cool air is about the best.
 17 Q I also want to get into -- ask you a few
 18 questions about the training that you've received
 19 in terms of responses to domestic disturbances,
 20 domestic violence calls.
 21 What training have you, we'll start
 22 generally, what training generally have you had
 23 about what steps to take when arriving at a
 24 situation with an alleged victim, or a seeming
 25 victim and a seeming aggressor or perpetrator?

Page 31

1 A My recall is a little bit different. I've been
 2 taught first of all I need to make sure that I
 3 stay safe, that any other officers working with
 4 me stay safe so that we can then help others on
 5 scene, protect the innocent parties that are
 6 involved, the non-aggressors. And then lastly,
 7 worry about the safety of the aggressor or
 8 attacker or the person that's reportedly causing
 9 the harm.
 10 Q At this point when Ms. Jensen, the person later
 11 identified as Ms. Jensen, is on that front
 12 landing, where were the other individuals,
 13 non-law enforcement individuals in the house?
 14 Where were they then?
 15 A I was under the impression that they were all
 16 still upstairs. I had not seen them leave, but I
 17 was distracted by Ms. Jensen up to that point.
 18 Q Ms. Jensen has put forth the theory or the
 19 suggestion that one of the ways in which
 20 decontamination could have occurred would have
 21 been for somehow water transported, be it cloth
 22 or something, from the upstairs down to the front
 23 level.
 24 Was any consideration given by you in doing
 25 something like that?

Page 32

1 MR. LINDSEY: Objection to the form of
 2 the question.
 3 Q (By Ms. Jacobs, continuing) You can go ahead and
 4 answer.
 5 A That's not -- nothing that I considered seriously
 6 at that point. I've never been trained to do
 7 that, to decontaminate anyone on scene who's
 8 combative and fighting and attacking, or anyone
 9 for that matter.
 10 Q Do you have a recollection as to when Sergeant
 11 Budreau arrived at the house?
 12 A My recollection is Officer Budreau and Officer
 13 Novak arrived about the same time. I don't
 14 recall which one actually walked in the door
 15 ahead of the other. But they, the two of them
 16 arrived while I was still trying to get
 17 Ms. Jensen under control on the basement floor.
 18 Q What I'd like to do now is continue, what we'll
 19 do is just walk through the remainder of your
 20 report, kind of go paragraph by paragraph.
 21 If you want to go ahead and take a look and
 22 review the next paragraph and let me know if that
 23 is consistent with your understanding as to -- as
 24 you sit here today regarding what occurred then.
 25 A That is my recollection.

Pages 29 to 32

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 33

1 **Q Okay. So at this point in time we're still at**
2 **that front landing area.**

3 **Was the odor from the OC spray, was that**
4 **still pretty thick from down below?**

5 A I couldn't tell you for certain about OC or
6 pepper spray being in the air, being atomized,
7 whatever, within the air.

8 I was already affected by being in the room
9 with the highest concentration. I was coughing.
10 My eyes were watering. I was dealing with the
11 effects, so I could not tell what was in the air
12 that anyone else might be experiencing that just
13 walked in the room.

14 **Q Understood. Is it fair to say that it was the**
15 **thickest still downstairs?**

16 A I'm sorry. Say again, please?

17 **Q Is it fair to say it was the thickest**
18 **downstairs?**

19 A Yes. That's where it was dispensed.

20 **Q So in terms of going to retrieve water or a towel**
21 **or anything like that, going downstairs would**
22 **have put you right in line with where the OC**
23 **spray was thickest; is that correct?**

24 A I would think anybody, anybody going down there
25 would have, would have walked into a cloud

Page 34

1 compared to being upstairs or outside.

2 **Q And again, I want to freeze us for a moment at**
3 **the front landing area. Did you have -- forgive**
4 **me.**

5 **Were you able to formulate at that time a**
6 **game plan for decontamination for Ms. Jensen?**

7 A Well, our standard operating procedure is to get
8 that person loaded into a squad car as quickly as
9 reasonably safe, and as soon as we're able to, to
10 transport that person to the garage, the entrance
11 port at the Bayfield County Jail where we have an
12 eyewash station, an overhead shower facility, and
13 get that person flushed out with cool water as
14 soon as reasonably possible.

15 **Q You had testified previously that this call**
16 **happened at night.**

17 **Were there any medical facilities that were**
18 **open that you knew of at that time that you could**
19 **have transported Ms. Jensen to that was closer**
20 **than the Bayfield County Jail?**

21 A No. No.

22 **Q And were you aware of the fact that Officer Novak**
23 **had a body camera on at the time?**

24 A I don't know if I was aware at the time. I found
25 out later, but I don't know if I was aware while

Page 35

1 things were taking place.

2 **Q That's a fair -- that is a fair correction for my**
3 **question because my question, I was just trying**
4 **to introduce the fact that there's a comment that**
5 **appears to have been made on the body camera that**
6 **somebody told Ms. Jensen that she would be taken**
7 **to a hospital.**

8 **Do you recall that at all or who said**
9 **that?**

10 A I didn't recall it until reviewing, or taking a
11 quick look at the video this morning. So I
12 didn't have an independent recollection of saying
13 that until today.

14 **Q Is that something that you said at that time?**

15 A Well, apparently. I watched myself on video.
16 But it's not something that I -- that's not my
17 normal response. I did not recall that until
18 seeing myself on video.

19 **Q In any event, the closest place in order to --**
20 **the closest place for decontamination was the**
21 **Bayfield County Jail; is that correct?**

22 A Yes.

23 **Q Do you recall Ms. Jensen having any issues with**
24 **getting on her shoes?**

25 A I remember we helped her put some shoes on. She

Page 36

1 was wearing just socks when she was combative. I
2 don't recall if it was Officer Budreau -- or
3 Sergeant Budreau or Officer Novak that actually
4 assisted her in putting her shoes on while I
5 maintained control of her arm.

6 **Q Still fair to say she was not being cooperative**
7 **at that time; is that correct?**

8 A Well, I understand that she was having difficulty
9 seeing, but she was struggling, pulling away from
10 me, trying to pull away from me.

11 I was concerned for the officers who,
12 bending down and trying to help her put her shoes
13 on, afraid that they might get kicked or kneed or
14 bumped down the stairs. I was concerned for
15 their safety based on the behavior I had seen up
16 until that point.

17 But she allowed one of the officers to help
18 her get her shoes on at the door.

19 **Q Initially you had escorted her to your squad car;**
20 **is that correct?**

21 A Officer Novak and I did.

22 **Q And a change was made and she was taken over to**
23 **Sergeant Budreau's car; is that correct?**

24 A Correct. He volunteered -- he understood I had
25 more things to do on scene, and as the primary

Pages 33 to 36

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 37	Page 39
<p>1 officer from that jurisdiction, felt it was best 2 that I conduct that investigation while he was 3 able to do the transport and get her 4 decontaminated quicker than I would be able to. 5 Q And you were agreeable with doing that? 6 MR. GROSS: I'm sorry, could you repeat 7 that? 8 Q (By Ms. Jacobs, continuing) You were agreeable 9 with doing that? 10 A I was agreeable, yes. 11 Q And the primary reason for agreeing to do that is 12 so that Ms. Jensen could be decontaminated more 13 quickly? 14 A Yes. 15 Q Once Ms. Jensen was in Sergeant Budreau's car, 16 did you have any further interaction with her? 17 A Once she was loaded and the door was closed, 18 no. 19 Q At that point what did you turn your attention 20 to? 21 A I returned to the interior of the house and 22 checked into what photographs had been taken by 23 Officer Novak, getting the identity of the 24 victims or reported victims in the house, getting 25 their stories individually, making sure that the</p>	<p>1 any experience with her before and hadn't seen 2 her prior -- or hadn't seen her face prior to the 3 deployment of OC. 4 She was unsteady on her feet, but she was 5 also combative, so it was difficult to make an 6 accurate assessment. However, I could tell that 7 she seemed to have been drinking. 8 And the parties that were present said that 9 they had all been drinking at a bar, and that 10 Ms. Jensen wanted them all to return to a bar is 11 why the fight started. 12 I had no reason to believe that all present 13 had not been drinking to some extent. 14 Q I did want to focus on -- and you did a much 15 better job of saying her name than I have and 16 will -- but I did want to turn my attention to 17 Ms. Washeleski. 18 Did you observe the nature of any injuries 19 that she had experienced? 20 A Yes. 21 Q And what were the extent of her injuries? 22 A She was holding a cloth on her face and she said 23 she was bleeding. She agreed to move the cloth 24 momentarily so I could take a look at her face 25 uncovered, and I could see that there was a</p>
Page 38	Page 40
<p>1 primary victim, I'm not sure if I'm going to say 2 her name right, Ms. Washeleski, that she was 3 getting treated by the ambulance staff that we 4 called for, viewing the damages myself that were 5 done in the home that night, and then getting 6 written statements from those that were able to 7 write written statements that night. 8 Q I know we're going back about three years. 9 Any recollection as to how inebriated or how 10 much some of the individuals were affected by 11 alcohol or whether some seemed to be under -- 12 some seemed to have imbibed that evening and 13 others did not? 14 MR. LINDSEY: Objection as to the form 15 of the question. 16 Q (By Ms. Jacobs, continuing) You can go ahead and 17 answer. 18 A It was hard to tell exactly how much each person 19 had had or not had. 20 With Ms. Jensen, I could detect a strong 21 odor of intoxicants about her person as she 22 spoke. I think I mention in my report that her 23 eyes were bloodshot and watery; however, she had 24 also just experienced OC deployment, so it was 25 hard to determine what was caused -- I never had</p>	<p>1 horizontal cut or gash across the bridge area of 2 her nose from side to side, and that appeared 3 that it was -- the bleeding was stopping, but she 4 said it was still bleeding inside, that's why she 5 had the rag on her face. 6 She also had a scratch or scrape on her 7 upper chest, said she was hurting. But those 8 were, as far as the things I could see, that's 9 what I recall. 10 Q Any assessment of whether or not she had been 11 drinking that evening? 12 A She said she had. And just looking at her eyes, 13 bloodshot and watery, it would be consistent with 14 someone drinking. However, she was also crying 15 heavily because she said she had just been struck 16 in the face with a child restraining gate that 17 was across the hallway. 18 So again, it was hard to make an accurate 19 assessment, but I took her word that she had been 20 drinking. 21 Q Do you remember when medical responders 22 arrived? 23 A It was, as I recall, it was at the time that we 24 transferred Ms. Jensen from my squad to Sergeant 25 Budreau's. I think they were entering the house</p>

Pages 37 to 40

<p style="text-align: right;">Page 41</p> <p>1 while we were finishing up that transfer, if I 2 recall correctly. 3 I believe that when I returned to the house 4 that at least one of the first responders was in 5 the back bedroom just starting to do an initial 6 exam of Ms. Washeleski. 7 Q Were you there at the time that Ms. Washeleski 8 was transported in the ambulance? 9 A I'm trying to remember if she was actually 10 transported or if she went by private vehicle 11 later. I don't recall for certain. 12 Q Do you recall -- 13 A I remember something when I first opened up the 14 report about no transport, but I can't -- I don't 15 recall which way she went to the hospital. 16 Q Were you there when she left the scene? 17 A Again, I don't recall if she was still there or 18 not. I spoke with several people that night. 19 Once I got my initial assessment of her and 20 her initial story, I let the ambulance people 21 take care of her so I could talk with others 22 intending that I would have to follow up with her 23 at a later time. 24 Q On that note, if I could redirect your attention 25 to the Incident Report. Let me ask this</p>	<p style="text-align: right;">Page 43</p> <p>1 seen it actually the next day when I took those 2 photos. 3 Q The individuals that you interviewed, Austin 4 LaValle (sic), Caitlin Olby, and Nicole Dietrich 5 in particular, do you have any recollection of 6 whether or not they seemed hesitant to cooperate 7 with you, reluctant, or wanting, as the saying 8 goes, wanting to stay out of it? 9 A Everyone seemed to speak freely with me. I don't 10 know if I've ever had anybody jump up and wave 11 and say let me be the first witness, but no one 12 was retreating from me. No one was saying I 13 won't speak with you. 14 The only reluctance I got was from I believe 15 it was Ms. Dietrich who said that I can't write 16 very well, but I'll talk to you, and so I just 17 took a verbal statement from her. 18 Q Do you recall having any specific conversations 19 with Sergeant Budreau there on scene? 20 A We had just a few words between us. My 21 recollection is that he just indicated to me that 22 this is your jurisdiction, or your primary 23 jurisdiction, you know, what can we do to help 24 you. He basically let me take the lead. 25 That would be consistent with him then</p>
<p style="text-align: right;">Page 42</p> <p>1 generally. 2 So is this the report that you prepared 3 regarding the incident that evening? 4 A Yes. 5 Q Where we left off was on page 4, and it was at 6 the very, very bottom. We did go through the two 7 large paragraphs. 8 If you could review starting at the very 9 bottom of page 4, those last two lines into the 10 next, go ahead and look through the remainder of 11 your report, take a moment, look through it, and 12 let me know if everything in there is consistent 13 with your memory of that evening. 14 A Okay. I've read it. 15 Q Is everything here consistent with what your 16 independent recollection is? 17 A The only thing it clarifies for me, as I 18 mentioned earlier, while doing my initial 19 assessment of injuries on Ms. Washeleski and I 20 mentioned a scrape on her upper chest. I know 21 that I, according to my report, I took 22 photographs of that during my follow-up interview 23 with her the next day. 24 So I may have misspoken when I said I saw 25 that the night of the disturbance. I may have</p>	<p style="text-align: right;">Page 44</p> <p>1 stepping up and saying, hey, I'll do the 2 transport so you can continue on with your 3 on-scene investigation. 4 MR. GROSS: Jerilyn? 5 MS. JACOBS: Yeah. 6 MR. GROSS: I don't know how much 7 longer you've got, but can we take five to 8 10? I need to stretch, get some water, and 9 hit the litigator's room. 10 MS. JACOBS: I'd say about 10 minutes 11 more, but we definitely can take a break and 12 do that. 13 MR. GROSS: If you've only got 10 14 minutes more, let's power through. 15 MS. JACOBS: All right. Let me know if 16 you really need to take a break, of course. 17 MR. LINDSEY: Just along that, I may 18 have 10 or 15 or so minutes as well, if you 19 want to break between or now. 20 MR. GROSS: In that case, let's take 21 the break if you've got some follow-up, Max. 22 MS. JACOBS: Okay. Take a 10-, 23 15-minute break? 24 MR. GROSS: Works for me. 10 would be 25 plenty on our end.</p>

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 45

1 MS. JACOBS: All right. Sounds good.

2 See you in 10 minutes.

3 MR. GROSS: Thanks.

4 (Off the record)

5 **Q (By Ms. Jacobs, continuing) First, just some**
 6 **housekeeping. If you could look at Exhibit 1 and**
 7 **Exhibit 2 in front of you, they're each just a**
 8 **single page.**

9 **My question will just be, is that your**
 10 **signature, just to confirm that?**

11 MR. GROSS: There's Exhibit 1. Go
 12 ahead and answer that one first, and then
 13 Exhibit 2.

14 **Q (By Ms. Jacobs, continuing) Is that your**
 15 **signature at the bottom?**

16 A That is my signature on Exhibit 1.

17 **Q Same question for Exhibit 2?**

18 A And that appears to be my signature on that
 19 document also.

20 **Q I did want to ask about some other background**
 21 **information.**

22 **Have there been other instances during your**
 23 **law enforcement career during which you've had to**
 24 **deploy OC spray or pepper spray or something of**
 25 **that ilk?**

Page 46

1 A Yes.

2 **Q How many other instances have there been?**

3 A I would really be guessing.

4 MR. GROSS: Don't guess.

5 A It would definitely be a guess.

6 **Q (By Ms. Jacobs, continuing) Can we just do an**
 7 **approximation? Have you deployed OC spray more**
 8 **than five times in your law enforcement career?**

9 A Yes.

10 **Q How many times have you deployed it while being a**
 11 **member of the Red Cliff Police Department?**

12 A Again, I'd be guessing there.

13 **Q And again, no guessing, but your best**
 14 **approximation. Just a high-low range.**

15 A More than five times, but I couldn't give you an
 16 accurate figure beyond that.

17 **Q I would be remiss if I don't run through some**
 18 **other questions.**

19 **Have you ever been -- I'm going to limit**
 20 **this to your time with the Red Cliff Police**
 21 **Department -- any written disciplines in your**
 22 **history?**

23 A Not that I'm aware of.

24 **Q Any suspensions?**

25 A No.

Page 47

1 **Q Are you aware of any citizen complaints brought**
 2 **against you?**

3 A Yes.

4 **Q How many of those?**

5 A I don't know. I usually find out after they've
 6 already been addressed, and I've been found not
 7 guilty of any wrongdoing and they've been
 8 cleared. I've been told about after the fact.

9 **Q Any of those involving use of OC spray, pepper**
 10 **spray, or the like?**

11 A I don't know, because at this point I don't even
 12 know all -- that I know of all the cases that
 13 people have complained about.

14 **Q Are you aware of any involving OC spray?**

15 MR. GROSS: I'm sorry. I'm not sure if
 16 that's an asked and answered or if I just
 17 didn't hear it right.

18 Could you restate the question, please?

19 MS. JACOBS: Sure. My understanding of
 20 his last answer was that he -- it was unknown
 21 whether or not there had been any.

22 And then my question was, was he
 23 affirmatively aware of any complaints that
 24 involved OC spray, putting aside --

25 MR. GROSS: Okay.

Page 48

1 MS. JACOBS: -- the present one.

2 MR. GROSS: Go ahead and answer.

3 A I can't say that I'm aware of any specific cases.

4 I know of people who have complained about me to
 5 a fellow officer.

6 But whether they filed an official
 7 complaint, followed through, had it actually
 8 addressed, I do not know.

9 **Q (By Ms. Jacobs, continuing) Had any superiors**
 10 **talked with you about any complaints involving**
 11 **the use of OC spray?**

12 A Not that I recall.

13 **Q When was the most recent, if you can recall, time**
 14 **that you were trained regarding decontamination**
 15 **or aftercare following deployment of OC spray or**
 16 **the like?**

17 A I recall going to a training at the Milwaukee
 18 police academy where we trained in
 19 decontamination of OC and we were the test
 20 subjects for a new wasabi mustard chemical agent
 21 that a company was trying out that we got
 22 volunteered for, and so we had to decontaminate
 23 from that in a similar manner.

24 **Q How was that experience?**

25 A Awesome.

Pages 45 to 48

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 49

1 **Q Remember, you're under oath here.**
 2 A Well, it had similar effects to the OC except it
 3 didn't affect the respiratory system. It burned
 4 on contact, but didn't affect the respiratory
 5 system.
 6 **Q How long ago was that training?**
 7 A I'm going to estimate back in 2013. Maybe 2012
 8 maybe.
 9 **Q I'm just going to look through my notes to see if**
 10 **there's anything I didn't cover that I somehow**
 11 **passed over.**
 12 MS. JACOBS: Those are all the
 13 questions I have. Thank you for your time,
 14 Officer Swan.
 15 I do believe that Attorney Lindsey may
 16 have some questions for you now.
 17 MR. LINDSEY: Yes, just a few. Thank
 18 you.
 19 EXAMINATION
 20 BY MR. LINDSEY:
 21 **Q Officer Swan, you weren't wearing any type of**
 22 **body camera or audio camera on the night of this**
 23 **incident; correct?**
 24 A I don't have a specific recollection that anyone
 25 had or didn't have one at the time of the

Page 50

1 event.
 2 **Q How about you specifically?**
 3 A Whether I had one?
 4 **Q Yes.**
 5 A I'm assuming that either I didn't have it or was
 6 not operable because I didn't see one submitted
 7 as part of the case. We had some -- I'm sorry.
 8 Go ahead.
 9 **Q You were just going to -- I was going to ask if**
 10 **you typically wear some type of audio or video**
 11 **recording device?**
 12 A I do now on a daily basis.
 13 Back at that time we did not have enough
 14 body cameras to go around to all the staff, and
 15 not all of them were operable. We were having
 16 some difficulties, and we replaced some units and
 17 upgraded them.
 18 I don't know if I didn't have one on that
 19 night or if it was just not operable.
 20 **Q When you first responded and got down to the**
 21 **bathroom on the night of this incident, and you**
 22 **testified that Ms. Jensen was inside the**
 23 **bathroom; is that right?**
 24 A Yes.
 25 **Q Could you see at that time if she was sitting or**

Page 51

1 standing?
 2 A Initially, no. The door was closed.
 3 **Q You testified that when you first sprayed**
 4 **Ms. Jensen, you did not know where the contact --**
 5 **the spray contacted her body at that time.**
 6 **You recall testifying to that?**
 7 A I think I testified that I didn't know if -- what
 8 effect it had at that time.
 9 **Q Okay.**
 10 A I was dispensing it towards her shoulder, lower
 11 neck area, but I couldn't see how it affected her
 12 or if it affected her.
 13 **Q At a later time, or after that, did you become**
 14 **aware of where that first shot hit her?**
 15 A I assumed that it hit her in the
 16 shoulder-neck-face area because of the reaction
 17 that I saw from her when it did take effect.
 18 **Q And you noticed that reaction before you brought**
 19 **her out to your squad car; right?**
 20 A Could you restate the question?
 21 **Q Yes. Did you notice that reaction and make that**
 22 **assumption, that it hit her in her head and neck,**
 23 **before you brought her out to your squad car?**
 24 A A lot of my assessment had to do with what she
 25 was reporting. You know, initially we were both

Page 52

1 affected by, you know, in the respiratory area
 2 because we were both coughing because of the OC
 3 in the air.
 4 She was -- began complaining about her eyes,
 5 but I didn't know if she actually had been
 6 sprayed -- the spray actually hit her in the face
 7 or just the atomized material in the air was
 8 starting to bother her eyes, but she started
 9 complaining about her eyes being sore as we were
 10 heading out of the house.
 11 **Q When you first worked with Ms. Jensen to get her**
 12 **to stand up, was she able to stand on her own?**
 13 A It depends on your definition of could. She
 14 didn't. But she was also very combative and not
 15 physically cooperative at that point, so could is
 16 kind of a subjective thing.
 17 **Q Could you see if when Ms. Jensen was in the**
 18 **bathroom, if she was attempting to stand while**
 19 **she was in the bathroom?**
 20 A It was -- I don't think she was trying to stand
 21 until I assisted her, started to lift up on her
 22 arm. She took some of the pressure off the door,
 23 but she was not cooperating on her own at that
 24 point.
 25 **Q Could you see whether she attempted to stand**

Pages 49 to 52

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 53

1 while she was still in the bathroom?

2 A Well, she did stand because I didn't pick her up.
3 I didn't lift her to her feet. I assisted her,
4 but I had control of her elbow and her wrist,
5 starting a compliance hold on her because of how
6 mad she was at that point.

7 So she stood. I didn't stand her up, but I
8 encouraged her, enticed her to help, you know, to
9 stand up.

10 Q That was a poor question I would say then.

11 Before she got out of the bathroom, before
12 you got into the bathroom with her, do you know
13 whether she was attempting to stand before you
14 opened the door?

15 A No, I was under the impression that she had been
16 standing and dropped to the floor to brace the
17 door shut, or slam into my arm.

18 Q What -- I guess you had said that you couldn't
19 see whether she was standing or sitting before
20 though; right?

21 A Well, like I said, I'm assuming that she was
22 standing to start with.

23 When she said come and get me and I started
24 to open the door, I could feel the door bow and
25 feel something slam against the door from the

Page 55

1 Q When you were in the house this evening, did you
2 notice if there was another bathroom facility in
3 the upstairs portion of the house?

4 A I believe there is directly above the one in the
5 basement.

6 Q And do you recall if there was a kitchen facility
7 in the house as well?

8 A There was on the second floor.

9 Q Do you recall a time in, not this incident, but
10 another incident around early 2019 where you had
11 deployed OC spray on another individual?

12 A I don't recall without some refreshment what
13 incident you might be referring to.

14 Q Do you recall within the past three or four years
15 escorting a detained individual to the Bayfield
16 County Jail who had been sprayed with pepper
17 spray or OC spray?

18 A I have done that, yes.

19 Q And do you recall approximately when that was?

20 A I'd be really guessing.

21 Did you ask when it was?

22 Q Yes.

23 A I would really be guessing without looking at a
24 record or a report.

25 Q And in these other instances, how many,

Page 54

1 opposite side and smash my arm, so I was assuming
2 that she was throwing herself or dropping to the
3 ground to brace herself against the base of the
4 tub.

5 Q And I just want to be clear.

6 You didn't actually see whether she was
7 standing, sitting, dropping, anything like that?
8 That was your assumption based on how things
9 happened?

10 A Correct. Based on what I could feel, what I
11 could sense at the time.

12 Q After Ms. Jensen was in handcuffs and secured
13 inside your vehicle, in your opinion, did she
14 pose a threat to any of the other occupants in
15 the home?

16 A Once she was seat belted in my squad?

17 Q Yes.

18 A No. Once she was -- no. Once she was secured in
19 my squad, no, she was not a danger to anyone
20 else.

21 Q And she wasn't a danger to other officers or EMTs
22 on the scene once she was secured in your
23 vehicle?

24 A Correct, as long as she remained in that position
25 and the doors remained shut.

Page 56

1 approximately, do you think there were?

2 A As I testified earlier, I'd really be guessing,
3 but I believe it was more than five.

4 Q And on those instances, can you explain in your
5 experience what happens to individuals after they
6 get to the Bayfield County Jail?

7 A When I've done the transport and have been
8 present, they're met at the garage area by
9 additional staff from the jail and they're taken
10 over to the corner of the garage where the
11 eyewash station and the overhead shower facility
12 is set up and they're allowed to flush their eyes
13 out with the eyewash station. If necessary, to
14 use the overhead shower there to flush off as
15 much of the OC as they can.

16 Q And when you have transported these individuals,
17 how long are you present at the Bayfield County
18 Jail afterwards on those occasions?

19 A I'm there until I complete the -- my part of the
20 booking process. They've been decontaminated --
21 or the initial decontamination, they're brought
22 inside, handcuffs are removed, and additional
23 layers of clothing and jewelry, etc., and like
24 they would if they were brought in for any other
25 arrest, and then they're brought into the inner

Pages 53 to 56

1 part of the jail where the booking process
2 continues, the paperwork part of it.

3 And sometimes they're taken back to a cell
4 and allowed to completely change clothes, shower
5 more thoroughly on their own and change clothes.
6 Sometimes just the initial eye flush is
7 sufficient.

8 I remain until my portion of the paperwork
9 is done and I leave. And normally by the time I
10 leave, they've completed all their
11 decontamination that they're going to do at that
12 time.

13 **Q And once you bring the individual in and turn**
14 **them over to the custody of the jail or the**
15 **control of the jailers, do you have any more**
16 **active role in decontamination at that point?**

17 A No. I'm normally just standing by and available,
18 if needed, if the person becomes more combative
19 than what the present staff can handle, maybe
20 hand a towel to someone if they can't reach.

21 But I'm basically just waiting for that
22 process to be completed so I can go inside with
23 the rest of the staff to do my paperwork.

24 **Q So you had said initial decontamination.**
25 **Can you explain if there's a difference**

1 **between initial decontamination and then some**
2 **other type of decontamination?**

3 A Sure. The initial decontamination takes place
4 outside of the secure part of the jail, it's in
5 the garage, and it's -- the person is normally
6 still in restraints, they're still handcuffed
7 behind their back. Usually that's because
8 they're so combative, they're spitting, they're
9 kicking, they're trying to head butt. It takes
10 multiple officers to try and control that person
11 because they're wet and the officers are wearing
12 rubber gloves, so they assist them in flushing
13 out the main part of the OC.

14 Once they're inside, then they get to,
15 they're in a jail cell where the restraints are
16 removed, the door is locked, they can freely move
17 about, scrub their eyes, scrub their hair, scrub
18 their eyebrows, use as much shampoo as they want
19 or need, and shower as long as they reasonably
20 need to to feel like they've gotten all the OC
21 off, and then they get to put on some clean, dry
22 clothes.

23 First one is assisted under restraints. The
24 second one is, if it happens, is on their own in
25 a room by themselves.

1 **Q And in your experience with any of these**
2 **instances, were you ever involved in the**
3 **subsequent decontamination phase?**

4 A Could you say that again?

5 **Q Yes. Were you ever involved in the secondary or**
6 **the subsequent, the later decontamination**
7 **phase?**

8 A No. I've only seen them heading towards that
9 room and been told that they were taking a second
10 shower, or taking a complete shower on their
11 own.

12 **Q And in your experience when you've seen that**
13 **occur, approximately how long is an individual**
14 **there at the jail before they are allowed that**
15 **opportunity for the secondary decontamination?**

16 A The ones that I have seen go in and take a
17 shower, it's been immediately after the cuffs are
18 removed and they've been thoroughly searched and
19 extra layers of clothing have been removed for
20 that search.

21 As soon as they are brought into the inner
22 part of the jail where we're doing our paperwork,
23 that's the next step. If they request it,
24 they're provided with that.

25 **Q And in these instances when the individual gets a**

1 **shower or a change of clothes as you just**
2 **mentioned, who makes that determination as to**
3 **whether that opportunity is provided? If you**
4 **know.**

5 MR. GROSS: I'm going to object to the
6 extent that this is calling for testimony
7 potentially outside his scope of knowledge.

8 MR. LINDSEY: So I can rephrase that.

9 **Q (By Mr. Lindsey, continuing) To the best of your**
10 **knowledge, and based upon your experience and**
11 **observing these events, who makes that**
12 **determination as to whether an individual gets a**
13 **follow-up or an immediate shower?**

14 A What I have observed is that if an inmate
15 requests it, the inmate gets it, whoever the
16 staff is on duty. I've never seen anybody been
17 denied or told no in my presence.

18 So what I've seen is when an inmate says I
19 need a shower, they get a shower immediately.

20 **Q Do you see or have you ever seen an instance**
21 **where the officer requested that the individual**
22 **get a shower immediately?**

23 MS. JACOBS: I'm going to object to
24 scope.

25 When you say ever, are you talking

1 about the entire 20-plus years of law
2 enforcement, or are you limiting this to this
3 more recent?

4 MR. LINDSEY: I'll rephrase. Yes.

5 **Q (By Mr. Lindsey, continuing) So in these**
6 **instances that you recall at the Bayfield County**
7 **Jail with an individual subject to OC spray, do**
8 **you recall if the officer had ever requested that**
9 **individual get a decontamination shower**
10 **afterwards?**

11 A We always -- what I have observed is the officers
12 always request that the person get that initial
13 decontamination out in the garage area with the
14 eyewash station.

15 As far as follow-up washing, showering,
16 etc., that's not something that the officers are
17 involved in. It's at the request of the inmate
18 based on their comfort level. If they say they
19 need one, they get one.

20 **Q And in your experience of these instances we have**
21 **been discussing at the Bayfield County Jail**
22 **regarding inmates or arrestees with OC spray,**
23 **have you ever seen that outside shower unit used?**

24 MS. JACOBS: I'm going to object on the
25 grounds of misstates the testimony.

1 **that jailers ask when these individuals are**
2 **turned over?**

3 MR. GROSS: I'm going to object as
4 being overly vague.

5 MS. JACOBS: I'm going to object to
6 being speculative.

7 You can answer.

8 MR. GROSS: Go ahead and answer.

9 **Q (By Mr. Lindsey, continuing) In your experience**
10 **when you bring an individual to the Bayfield**
11 **County Jail, do they ask you, would the jailers**
12 **ask you where that individual has been sprayed?**

13 A Do they ask me where they've been sprayed?

14 **Q If you bring that individual in?**

15 A I don't know that I've been asked that specific
16 question. I mean we're all trained the same way.

17 But regardless of where they're sprayed,
18 they're still going to be decontaminated the same
19 way. They flush their eyes out and let them
20 rinse, shower, you know, bathe whatever part of
21 their body they're complaining about.

22 **Q Did you call the EMS on the night of this, the**
23 **incident?**

24 A I did not call them myself, no. I believe they
25 had already been dispatched prior to me beginning

1 You can go ahead and answer.

2 MR. GROSS: Join.

3 Go ahead and answer the question, if
4 you remember it.

5 A I've seen it used, yes.

6 **Q (By Mr. Lindsey, continuing) And can you explain,**
7 **based on your recollection and your memory, in**
8 **what type of situation would that be used?**

9 A I recall one, one subject that had just this real
10 mop of hair, he had hair down below his
11 shoulders. It was unkempt. It was -- if I had to
12 describe him to someone who never met him, I'd
13 say he looked like a caveman. He had facial
14 hair. He had hair that you'd have to peel back
15 to see his face.

16 So after having the initial water in his
17 eyes using the eyewash station, and his hair was
18 so wet and it was so matted from not being taken
19 care of prior to his arrest that the officers
20 used the overhead shower to just you rinse off as
21 much as they could at his request.

22 **Q Is there any, based on your experience of being**
23 **with individuals, present with individuals at the**
24 **Bayfield County Jail who have been sprayed with**
25 **OC spray, do you know of any standard questions**

1 my response.

2 **Q In your training on use of OC spray, do you**
3 **recall ever learning about any interactions**
4 **between alcohol use and the effects of OC**
5 **spray?**

6 A I guess you're going to have to clarify that a
7 little bit more.

8 **Q In your training on OC spray -- you had training**
9 **on OC spray; right?**

10 A Yes.

11 **Q Do you recall any specific training that**
12 **discussed the interaction between alcohol**
13 **consumption by the individual who was sprayed and**
14 **those effects of OC spray?**

15 A I probably sprayed more people who were consuming
16 alcohol than people who were sober and
17 cooperative.

18 **Q And in your training and the way you are I**
19 **guess -- strike that.**

20 **Based on your experience and your training,**
21 **do you treat individuals differently who have**
22 **been sprayed -- or who have consumed alcohol when**
23 **applying OC spray?**

24 A No. Our use of force depends on the behavior of
25 the individual, not on what they consumed that

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 65

1 day.

2 **Q Did you provide Ms. Washeleski with any medical**
 3 **care or assist with any medical care while you**
 4 **were on site at the house?**

5 A I did not personally, no.

6 **Q In your squad car do you carry any type of first**
 7 **aid kit or other medical supplies?**

8 A Some of the squads had some small kits back at
 9 that time. We sometimes use different squads on
 10 different days.

11 I didn't have necessarily an assigned
 12 vehicle like I have now, so some days we may have
 13 had a better first aid kit than others.

14 **Q Do you recall on the night of this incident**
 15 **whether you had a first aid kit in your vehicle**
 16 **or on your person?**

17 A I do not recall. I did not have one on my
 18 person, no.

19 Let me clarify. I always have a small first
 20 aid kit of my own, but it's very small,
 21 Band-Aids, a few gauze bandages, but nothing
 22 elaborate.

23 **Q During the night of the incident did you, while**
 24 **you were at the house, did you ever ask**
 25 **Ms. Jensen if she was wearing contacts?**

Page 67

1 A I recall Sergeant Budreau suggesting that it
 2 might make more sense for me to remain on scene
 3 since I was the primary -- or in charge of the
 4 primary jurisdiction there, and to conduct -- or
 5 complete my investigation while he could
 6 transport and not have to relay all that
 7 information to me secondhand from the
 8 investigation, and he could get Ms. Jensen down
 9 to get her decontaminated much quicker that
 10 way.

11 **Q Well, on page 4 of your Incident Report, which is**
 12 **Exhibit 3, if you turn to that page 4. I'm just**
 13 **going to ask one question about this bottom full**
 14 **paragraph.**

15 A Which one?

16 **Q The last full paragraph on that page. It starts,**
 17 **I observed while arresting.**

18 A All right.

19 **Q So going down here to the second to last**
 20 **sentence, Sergeant Budreau later reported back to**
 21 **me that Tristan Jensen was decontaminated from**
 22 **the OC pepper spray by jail staff upon her**
 23 **arrival at the jail.**

24 **Do you recall how Sergeant Budreau reported**
 25 **that back to you?**

Page 66

1 A I don't have a specific recollection of that,
 2 whether I did or did not.

3 **Q Did you ever ask Ms. Jensen if she had asthma or**
 4 **any other breathing issues?**

5 A I don't think I did. I know I encouraged her to
 6 calm her breathing down, control her breathing,
 7 but I don't remember asking her a specific
 8 question about asthma.

9 **Q Did you ask Ms. Jensen if she had any heart**
 10 **conditions or any other type of specific medical**
 11 **condition?**

12 A I did not.

13 **Q Regarding these questions -- I can go through**
 14 **them one by one.**

15 **Did Sergeant Budreau ever ask you whether**
 16 **Ms. Jensen had contacts?**

17 A Not that I recall.

18 **Q And did Sergeant Budreau ever ask you if**
 19 **Ms. Jensen had asthma or breathing issues or**
 20 **other heart condition?**

21 A No. Not that I recall.

22 **Q When you and Sergeant Budreau discussed or**
 23 **decided that Ms. Jensen transfer into Sergeant**
 24 **Budreau's vehicle, can you explain that**
 25 **conversation, to the best of your recollection?**

Page 68

1 A I don't remember the specifics of the
 2 conversation. It's just -- I believe I asked him
 3 the question, because I wanted to include in my
 4 report, since I had dispensed the OC, I just
 5 wanted to be able to say confidently that that
 6 had been done. That's where he was taking her.
 7 I assumed that was done. But I believe I just
 8 asked him outright so I could include that in my
 9 narrative report.

10 **Q Do you recall what Sergeant Budreau said in that**
 11 **conversation?**

12 A He indicated that she had been decontaminated.
 13 Again, the exact words I couldn't tell.

14 **Q Do you recall if he said she had been provided**
 15 **with a shower?**

16 A I don't recall having a detailed discussion other
 17 than him just saying that she had been
 18 decontaminated from OC.

19 **Q So he didn't discuss the specific steps or**
 20 **actions that they took to decontaminate?**

21 A Correct.

22 **Q When you arranged with Sergeant Budreau to have**
 23 **him transfer Ms. Jensen to Bayfield County Jail,**
 24 **what was your understanding of the steps of**
 25 **decontamination that would be taken once she had**

Pages 65 to 68

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 69

1 arrived there?

2 A It would be the same as I just went through in

3 great detail a few moments ago. Nothing

4 different.

5 Q While you're at the house did you ask anyone

6 whether there were any towels available?

7 A I did not.

8 Q Did you ask anyone if there was any vegetable oil

9 or baby soap or saline solution available?

10 A No, I did not.

11 Q Do you know if Sergeant Budreau ever asked anyone

12 at the house if those items were available?

13 A I did not hear him, and I have no reason to

14 believe he did.

15 Q Did Sergeant Budreau ever ask you where on her

16 body Ms. Jensen was sprayed?

17 A Not that I recall.

18 Q Did you ever specifically tell him, in your

19 recollection, did you specifically tell him where

20 Ms. Jensen was sprayed?

21 A I don't believe I did.

22 Q Does the Red Cliff tribe have a medical clinic on

23 their reservation?

24 A I'm sorry. I missed the first part.

25 Q Yes. Does the Red Cliff tribe have a medical

Page 70

1 clinic on their reservation?

2 A They do.

3 Q Is that medical clinic open 24 hours a day?

4 A No.

5 Q Do you know if it was open at the time that this

6 incident arose?

7 A It's never open beyond banker's hours Monday

8 through Friday, as far as I'm aware.

9 Q In the Red Cliff Police Department, do you have

10 any specific training on working with or

11 coordinating with outside agencies such as the

12 Bayfield County Sheriff's Department?

13 A We work with them daily.

14 Q Do you have any specific training relating -- or

15 regarding how those interactions and how those --

16 strike that. I'll ask that again.

17 Do you have any specific training as to

18 proper -- or policies and procedures that happen

19 when Red Cliff Police Department and Bayfield

20 County Sheriff's Department both respond to a

21 scene?

22 MR. GROSS: I'm going to object to the

23 extent that it assumes facts not in evidence.

24 Go ahead and answer, if you can.

25 A We respond based on our training and experience.

Page 71

1 Q (By Mr. Lindsey, continuing) I can rephrase. I

2 can start that over.

3 A We have similar policies, but there's never been

4 an issue.

5 Q My question I guess wasn't to ask what your

6 training or specific policies were with that,

7 just do you have any specific training that you

8 can recall specifically regarding that issue of

9 joint response between Red Cliff and Bayfield

10 County sheriff?

11 A Nothing specific as far as inner agency

12 cooperation, other than be polite and work with

13 everybody around you is our standard operating

14 procedure.

15 But as far as a specific training course,

16 no. Again, I normally work by myself, so.

17 Q I think I'm almost done, or I am done. Just let

18 me check my notes one second.

19 MR. LINDSEY: I don't have any more

20 questions.

21 MR. GROSS: I don't have any questions

22 either.

23 MS. JACOBS: No redirect. Thank you

24 for your time, Officer Swan.

25 COURT REPORTER: Mr. Gross, would you

Page 72

1 like a copy of the transcript?

2 MR. GROSS: I may want a copy of the

3 transcript. I have to speak with my client.

4 I will circle back to you if they authorize

5 me to get one.

6 COURT REPORTER: Mr. Lindsey?

7 MR. LINDSEY: I do not need a paper

8 copy. I would like an electronic copy.

9 COURT REPORTER: Of all three?

10 MR. LINDSEY: Yes.

11 (The Zoom deposition of Eric Swan came

12 to a close at approximately 1:08 p.m.)

* * *

Pages 69 to 72

JENSEN v. BAYFIELD COUNTY

ERIC SWAN

2/7/2022

Page 73

1 STATE OF WISCONSIN)

2 COUNTY OF ST. CROIX)

3 Be it known that I took the deposition of
4 Eric Swan, on the 7th day of February, 2022, remotely
5 via Zoom;

6 that I was then and there a Notary Public in and
7 for the County of St. Croix, State of Wisconsin, and
8 that by virtue thereof I was authorized to administer
9 an oath;

10 that the witness, before testifying, was by
11 me first duly sworn to testify to the whole truth and
12 nothing but the truth relative to said cause;

13 that the testimony of said witness was
14 recorded in stenotypy by myself and reduced to print
15 by means of Computer-Assisted Transcription under my
16 direction, and that the deposition is a true record of
17 the testimony given by the witness to the best of my
18 ability;

19 that I am not related to any of the parties
20 hereto nor interested in the outcome of the action.

21 Dated this 18th day of February, 2022.
22

23 _____
24 Terri Stacken, RPR
25 St. Croix County, Wisconsin
Commission Expires
10-29-2022

Page 73

A	14:11 20:8	5:19	arose 70:6	assuming	70:8	23:21 24:3	12:23
A.M 1:16	28:2 32:3	anybody 5:9	arranged	50:5 53:21	Awesome	25:1 28:20	29:25
ability 73:18	32:15,21	10:21	68:22	54:1	48:25	28:22	30:16 37:1
able 10:18	38:16	11:12	arrest 28:24	assumption		50:21,23	46:13 60:9
17:7,20	42:10	33:24,24	56:25	51:22 54:8	B	52:18,19	66:25
18:13 22:6	45:12 48:2	43:10	62:19	asthma 66:3	baby 69:9	53:1,11,12	73:17
22:8 24:14	50:8 62:1	60:16	arrestees	66:8,19	back 5:14	55:2	better 39:15
29:1 34:5	62:3 63:8	anymore	61:22	atomized	8:19 17:18	bathtub	65:13
34:9 37:3	70:24	24:13	arresting	33:6 52:7	18:8,22	18:24	beyond
37:4 38:6	aid 65:7,13	apologize	67:17	attach 10:17	20:20 24:6	19:23	46:16 70:7
52:12 68:5	65:15,20	27:2	arrival	10:18	29:14 38:8	battered	big 8:16
academy 7:9	aim 21:2	apparently	67:23	attached	41:5 49:7	12:1	bit 29:15,17
7:15 48:18	aiming	35:15	arrived	3:21	50:13 57:3	Bayfield 1:7	30:1 31:1
accurate	21:20	appear	11:14,15	attacked	58:7 62:14	2:10 34:11	64:7
39:6 40:18	air 23:5,7	27:20	15:19	12:1	65:8 67:20	34:20	Blake 2:12
46:16	30:1,5,11	APPEAR...	25:15,15	attacker	67:25 72:4	35:21	2:12 4:22
action 73:20	30:16 33:6	2:1	25:16,17	12:22 31:8	background	55:15 56:6	blast 20:2
actions	33:7,11	appeared	28:2 32:11	attacking	4:17 45:20	56:17 61:6	21:21
68:20	52:3,7	2:5,9,14	32:13,16	22:4 32:8	Band-Aids	61:21	bleeding
active 57:16	alcohol 16:6	40:2	40:22 69:1	attempt	65:21	62:24	39:23 40:3
addition 5:9	38:11 64:4	appears	30:23	16:12	bandages	63:10	40:4
additional	64:12,16	35:5 45:18	Ashland 2:4	attempted	65:21	68:23	block 17:9
56:9,22	64:22	apply 7:18	2:13	52:25	banker's	70:12,19	17:22
addressed	alleged	applying	aside 47:24	attempting	70:7	71:9	bloodshot
47:6 48:8	30:24	21:1 64:23	asked 47:16	52:18	bar 39:9,10	beautiful	38:23
administer	Allegiance	approxima...	63:15 68:2	53:13	base 20:4	8:12	40:13
73:8	18:11	55:19 56:1	68:8 69:11	attention	25:10 54:3	bedroom	body 18:25
advise 5:6	allowed	59:13	asking 12:10	27:23	based 36:15	41:5	19:2 20:6
affect 49:3,4	36:17	72:12	13:6,8	37:19	54:8,10	bedrooms	20:23 21:9
affirmativ...	56:12 57:4	approxima...	15:7 66:7	39:16	60:10	13:20,20	24:23 30:4
47:23	59:14	46:7,14	assaulted	41:24	61:18 62:7	began 29:6	34:23 35:5
afraid 36:13	Amanda	area 8:11,12	12:1	attorney 4:9	62:22	52:4	49:22
aftercare	26:18	17:22	assess 16:4	5:3 25:24	64:20	beginning	50:14 51:5
29:21	ambulance	18:14 20:4	assessment	49:15	70:25	16:7 28:1	63:21
48:15	38:3 41:8	21:3,5,21	39:6 40:10	attorneys	basement	63:25	69:16
agencies	41:20	23:15 24:2	40:19	4:9	13:12,23	behavior	booking
70:11	angle 18:7	24:2 29:1	41:19	audio 49:22	24:25	36:15	56:20 57:1
agency	20:22	33:2 34:3	42:19	50:10	25:11,18	64:24	bother 52:8
71:11	ANICH 2:3	40:1 51:11	51:24	Austin 43:3	25:20,22	believe	bottom 42:6
agent 48:20	announce	51:16 52:1	assigned	authorize	32:17 55:5	10:14	42:9 45:15
agents 15:14	13:16 14:2	56:8 61:13	65:11	72:4	basic 7:16	11:25	67:13
aggressor	announcing	arm 16:18	assist 58:12	authorized	basically	39:12 41:3	bow 53:24
12:22	13:5,6	16:18,20	65:3	73:8	12:8 18:10	43:14	brace 53:16
28:17	answer 32:4	16:22,23	assistant	available	19:1 43:24	49:15 55:4	54:3
30:25 31:7	38:17	17:5,7,16	26:17	23:22 30:7	57:21	56:3 63:24	bracing
ago 9:3	45:12	17:16,18	assisted 36:4	57:17 69:6	basics 7:22	68:2,7	19:22
12:10 49:6	47:20 48:2	17:22 18:2	52:21 53:3	69:9,12	basis 50:12	69:14,21	break 20:14
69:3	62:1,3	18:5,14	58:23	Avenue 2:4	bathe 63:20	belted 54:16	25:2 44:11
agreeable	63:7,8	19:1,6	assume	aware 11:6,6	bathroom	bend 22:1	44:16,19
37:5,8,10	70:24	20:21	20:22	15:19	13:22	bending	44:21,23
agreed	answered	23:10 36:5	assumed	34:22,24	14:11	20:25	breathing
39:23	47:16	52:22	51:15 68:7	34:25	18:16 23:3	36:12	30:3 66:4
agreeing	Anthony 1:7	53:17 54:1	assumes	46:23 47:1	23:5,8,12	beneath	66:6,6,19
37:11	2:11	armbar	70:23	47:14,23	23:14,15	25:5	breeze 30:2
ahead 13:22	anticipate	24:10		48:3 51:14	23:16,17	best 11:4	bridge 40:1

brief 6:4	50:14	42:20	19:9 21:14	compression	32:3 37:8	54:10,24	D
briefly 7:12	car 34:8	chief 6:8,24	23:4,5,7	24:11	38:16 45:5	68:21	daily 50:12
bring 57:13	36:19,23	7:3 8:17	25:19	Computer...	45:14 46:6	correction	70:13
63:10,14	37:15	child 40:16	28:20,21	73:15	48:9 60:9	35:2	damages
broaden	51:19,23	cigarette	53:23	concentrat...	61:5 62:6	Corrections	38:4
29:4	65:6	14:21	comes 5:10	33:9	63:9 71:1	8:9	danger
brought	care 41:21	circle 72:4	10:11	concern	control 24:5	correctly	24:12
4:11 8:6	62:19 65:3	citizen 47:1	comfort	23:23	24:12,14	41:2	54:19,21
47:1 51:18	65:3	Claire 2:9	61:18	concerned	30:2 32:17	coughing	dark 13:2
51:23	career 45:23	clarifies	comfortable	36:11,14	36:5 53:4	23:6 33:9	Dated 73:21
56:21,24	46:8	28:15	16:24	condition	57:15	52:2	Davenport
56:25	CARLSON	42:17	coming 6:1	66:11,20	58:10 66:6	counsel 3:23	6:7
59:21	2:8	clarify 64:6	9:24 10:4	conditions	conversati...	County 1:7	day 1:15
buckled 22:1	carries	65:19	13:10 14:9	66:10	66:25 68:2	2:11 6:10	9:12 42:23
Budreau 1:7	28:13	clean 58:21	14:10,18	conduct 37:2	68:11	6:21 34:11	43:1 65:1
2:11 4:10	carry 65:6	clear 6:9,25	19:19	67:4	conversati...	34:20	70:3 73:4
32:11,12	case 1:6	7:1 14:22	23:11	confidently	43:18	35:21	73:21
36:2,3	44:20 50:7	19:20 54:5	commands	68:5	cool 30:11	55:16 56:6	days 65:10
43:19	cases 47:12	cleared 47:8	15:7,22	confirm	30:16	56:17 61:6	65:12
66:15,18	48:3	client 72:3	17:2	45:10	34:13	61:21	deal 28:17
66:22 67:1	cause 73:12	Cliff 3:17	comment	considerat...	cooler 30:8	62:24	dealing
67:20,24	caused	5:23,24	35:4	31:24	cooperate	63:11	33:10
68:10,22	38:25	6:13 8:6	comments	considered	14:23 15:9	68:23	decentralize
69:11,15	causing 31:8	8:11 46:11	16:3	32:5	15:15 17:3	70:12,20	24:10
Budreau's	caveman	46:20	Commission	consistent	18:18	71:10 73:2	decided
36:23	62:13	69:22,25	73:24	28:7,13	19:20	73:7,23	66:23
37:15	cell 57:3	70:9,19	company	32:23	21:16 43:6	couple 12:7	decontami...
40:25	58:15	71:9	48:21	40:13	cooperating	13:20	32:7 48:22
66:24	certain 16:7	clinic 69:22	compared	42:12,15	52:23	course 44:16	68:20
bumped	22:21,23	70:1,3	34:1	43:25	cooperation	71:15	decontami...
36:14	33:5 41:11	close 72:12	complained	consumed	16:2,15	court 1:1	37:4,12
burned 49:3	Certainly	closed 37:17	47:13 48:4	64:22,25	71:12	5:11 26:11	56:20
business	9:21	51:2	complaining	consuming	cooperative	71:25 72:6	63:18 67:9
7:23	challenged	closer 34:19	29:6,9	64:15	22:16 36:6	72:9	67:21
butt 58:9	28:20	closest 20:5	52:4,9	consumpti...	52:15	Courte 6:12	68:12,18
	chance	21:6 35:19	63:21	64:13	64:17	6:18	decontami...
C	23:20	35:20	complaint	contact 16:9	cooperativ...	cover 49:10	29:20
Caitlin 43:4	change 22:5	cloth 31:21	48:7	21:8 49:4	14:25	covered 15:1	31:20 34:6
call 9:7,13	36:22 57:4	39:22,23	complaints	51:4	coordinati...	crack 20:16	35:20
9:14,20,24	57:5 60:1	clothes 57:4	47:1,23	contacted	70:11	crimes 6:11	48:14,19
10:4,16	changed	57:5 58:22	48:10	51:5	copies 3:22	criminal	56:21
13:20 14:7	28:23	60:1	complete	contacts	copy 4:21,22	11:3	57:11,16
24:2 34:15	chaotic	clothing	56:19	65:25	25:25 26:5	CRIVELLO	57:24 58:1
63:22,24	10:11	56:23	59:10 67:5	66:16	26:10,23	2:7	58:2,3
called 38:4	characterize	59:19	completed	containing	26:25 72:1	Croix 73:2,7	59:3,6,15
calling 13:15	11:4	cloud 33:25	27:18	17:16	72:2,8,8	73:23	61:9,13
14:1 60:6	charge 67:3	cold 30:8	57:10,22	continue	corner 56:10	crying 40:14	68:25
calls 9:12,19	check 71:18	combative	completely	32:18 44:2	correct 20:3	cuffs 59:17	Defendants
30:20	checked	22:4 32:8	57:4	continued	20:10	current 5:21	1:9 2:10
calm 30:3	37:22	36:1 39:5	compliance	14:13	24:24	currently	definitely
66:6	chemical	52:14	53:5	21:13,16	33:23	6:13	44:11 46:5
camera 5:4	15:14	57:18 58:8	complies	continues	35:21 36:7	custody	definition
34:23 35:5	48:20	come 13:7,8	28:9	57:2	36:20,23	57:14	52:13
49:22,22	chest 18:10	14:13,15	complying	continuing	36:24	cut 40:1	degree 22:21
cameras	21:5 40:7	14:17,24	22:18	5:15 27:11	49:23		22:23

delay 27:2	Dietrich	disturbanc...	53:16	61:2	3:3 4:4	F	find 12:7
demanding	43:4,15	30:19	dropping	entailed 7:13	49:19	F-bombs	13:2,12
14:20	difference	document	54:2,7	enter 16:10	exhibit 3:21	14:7	47:5
denied 60:17	26:9 57:25	27:12	dry 58:21	22:6	45:6,7,11	face 21:5	finding 11:3
department	different	45:19	duly 4:2	entered 23:2	45:13,16	39:2,22,24	fine 5:8
5:23,25	31:1 65:9	doing 18:11	73:11	24:1	45:17	40:5,16	finishing
6:10,12,14	65:10 69:4	31:24 37:5	duty 60:16	entering	67:12	52:6 62:15	41:1
7:6 8:7,8	differently	37:9 42:18		15:11	Exhibits	face-to-face	firearms
8:12,16	64:21	59:22	E	40:25	3:16 27:4	16:8	7:20
46:11,21	difficult 39:5	domestic	earlier 42:18	entice 15:14	exited 28:22	facedown	firm 2:3,7
70:9,12,19	difficulties	10:6,16	56:2	enticed 53:8	experience	24:9	first 4:2 6:2
70:20	50:16	30:19,20	early 9:15	entire 7:14	39:1 48:24	facial 62:13	6:6 9:10
depends	difficulty	door 11:17	55:10	61:1	56:5 59:1	facilities	10:7 11:14
52:13	36:8	11:18	Eau 2:9	entrance	59:12	30:7 34:17	11:15 12:5
64:24	direct 15:23	16:17,18	effect 22:17	25:23	60:10	facility	12:6 21:20
deploy 19:17	21:13	16:19,20	51:8,17	34:10	61:20	34:12 55:2	27:8 28:2
21:11,12	27:22	17:3,4,5,8	effects 33:11	Eric 1:8,14	62:22 63:9	55:6 56:11	28:4 29:10
45:24	directed	17:9,23	49:2 64:4	3:4 4:1,15	64:20	fact 34:22	31:2 41:4
deployed	14:7	18:22,22	64:14	72:11 73:4	70:25	35:4 47:8	41:13
46:7,10	directing	19:1,2,3	efforts 16:1	escort 25:22	experienced	facts 70:23	43:11 45:5
55:11	15:8	19:23	either 21:25	escorted	38:24	fair 9:2,6	45:12
deployment	direction	20:16,19	50:5 71:22	36:19	39:19	23:17	50:20 51:3
29:19,21	16:16	20:24,24	elaborate	escorting	experiencing	33:14,17	51:14
38:24 39:3	73:16	21:14,17	65:22	55:15	33:12	35:2,2	52:11
48:15	directly 21:7	21:25 22:8	elbow 17:22	estimate	Expires	36:6	58:23 65:6
deposes 4:3	22:9 55:4	22:25	18:5,8,14	49:7	73:24	far 13:24	65:13,15
deposition	disciplines	29:12	53:4	evening 4:20	explain 56:4	40:8 61:15	65:19
1:14 5:11	46:21	32:14	electronic	5:17 9:17	57:25 62:6	70:8 71:11	69:24
26:14	discomfort	36:18	72:8	28:8,14	66:24	71:15	73:11
72:11 73:3	22:3	37:17 51:2	email 26:7	38:12	expletives	Favret 26:18	five 44:7
73:16	discuss	52:22	26:18	40:11 42:3	14:6 19:18	February	46:8,15
deputy 6:9	68:19	53:14,17	emailed 26:8	42:13 55:1	extent 39:13	1:15 4:20	56:3
describe	discussed	53:24,24	emergency	event 35:19	39:21 60:6	8:19 9:3,8	flashlight
11:9,11	64:12	53:25	7:20	50:1	70:23	27:19 73:4	13:4
12:24	66:22	58:16	employer	events 9:7	extra 59:19	73:21	flip 27:9,15
20:11	discussing	doors 54:25	5:21	28:25	eye 57:6	feel 24:12	floor 18:23
62:12	61:21	doorway	employers	60:11	eyebrows	53:24,25	24:9 25:11
detail 69:3	discussion	18:6	6:15	eventually	30:14	54:10	32:17
detailed	68:16	downstairs	employment	14:4,16,18	58:18	58:20	53:16 55:8
68:16	dispatched	11:12,24	6:16	17:24 24:8	eyes 29:6,11	feeling 16:24	fluctuated
details 12:10	10:5 63:25	12:5,14,17	EMS 63:22	24:16	30:2,4,5,6	feet 18:23	8:23
13:24	dispense	12:19,21	EMTs 54:21	30:13	30:8 33:10	39:4 53:3	flush 30:8
detained	21:4,22	12:24 13:1	enclosed	everybody	38:23	fellow 48:5	56:12,14
19:11	dispensed	13:3,19,21	23:15	71:13	40:12 52:4	felt 37:1	57:6 63:19
28:23	20:1 33:19	25:4 28:16	encounter	everyone's	52:8,9	females	flushed
55:15	68:4	33:15,18	12:25	26:24	56:12	10:15	34:13
detect 38:20	dispensing	33:21	encourage	evidence	58:17	11:25 12:7	flushing
detective	51:10	drinking	15:9	70:23	62:17	fight 22:2,11	58:12
6:11,18	distract 5:4	16:6 39:7	encouraged	exact 12:2	63:19	22:13	focus 4:17
determina...	distracted	39:9,13	53:8 66:5	68:13	eyewash	39:11	39:14
60:2,12	31:17	40:11,14	enforcement	exactly	34:12	fighting 22:4	follow 41:22
determine	DISTRICT	40:20	6:2,5,6 7:9	21:10	56:11,13	23:25 24:6	follow-up
38:25	1:1,2	driving 7:19	7:16,19,19	38:18	61:14	32:8	42:22
device 50:11	disturbance	7:20	15:2 31:13	exam 41:6	62:17	figure 46:16	44:21
Dewey 2:8	42:25	dropped	45:23 46:8	EXAMIN...		filed 48:6	60:13

61:15 followed 48:7 following 29:21 48:15 follows 4:3 foot 17:4 force 7:20 15:11 17:5 22:8 30:5 64:24 forced 22:25 forearm 16:21 17:9 17:14,19 17:20 18:8 18:10 forgive 34:3 form 3:17 27:17 32:1 38:14 formulate 34:5 forth 31:18 forwarded 26:12 found 34:24 47:6 four 6:1,20 8:24 10:15 55:14 free 24:7 freed 17:20 freely 43:9 58:16 freeze 34:2 fresh 30:1 fresher 23:5 Friday 26:9 70:8 front 11:17 11:18 24:10 25:23 26:1 26:2 27:7 27:11 29:12,12 31:11,22 33:2 34:3 45:7 fuck 19:18 full 28:4 67:13,16 full-time	8:17,25 fully 22:18 furnished 3:22 further 17:10 37:16 <hr/> G gaining 16:1 16:14 game 34:6 garage 34:10 56:8 56:10 58:5 61:13 gash 40:1 gate 40:16 gauze 65:21 general 13:15 21:21 29:9 generally 29:15 30:22,22 42:1 getting 20:7 20:9 23:11 29:12 35:24 37:23,24 38:3,5 give 6:4 14:20 19:25 26:19 27:3 27:14 46:15 given 31:24 73:17 giving 17:2 gloves 58:12 go 5:1,16 11:16 12:11,19 12:21 14:21 27:10 28:2 28:15 29:13 32:3 32:20,21 38:16 42:6 42:10 45:11 48:2 50:8,14	57:22 59:16 62:1 62:3 63:8 66:13 70:24 goes 43:8 going 4:16 4:16 5:3 12:8 14:23 14:24 15:10,13 33:20,21 33:24 38:1 38:8 46:19 48:17 49:7 49:9 50:9 50:9 57:11 60:5,23 61:24 63:3 63:5,18 64:6 67:13 67:19 70:22 good 4:6,7 30:11 45:1 gotten 58:20 grab 5:1 17:17 great 69:3 Gross 2:12 2:13 3:12 4:25 5:14 25:24 26:4 26:13,19 26:23 27:2 27:10 37:6 44:4,6,13 44:20,24 45:3,11 46:4 47:15 47:25 48:2 60:5 62:2 63:3,8 70:22 71:21,25 72:2 ground 54:3 grounds 61:25 grow 8:13 guess 20:11 46:4,5 53:18 64:6 64:19 71:5 guessing	46:3,12,13 55:20,23 56:2 guilty 47:7 <hr/> H hair 30:14 58:17 62:10,10 62:14,14 62:17 hallway 24:2 40:17 hand 17:11 17:25 18:4 18:4,8,12 57:20 handcuffed 58:6 handcuffs 24:5,20 25:14 54:12 56:22 handle 57:19 hands-on 15:13 happen 21:15 70:18 happened 9:7 12:9 14:19 17:1 18:20 19:8 21:11,18 21:23 23:2 24:3 34:16 54:9 happens 56:5 58:24 hard 38:18 38:25 40:18 harm 31:9 harmed 24:13 head 51:22 58:9 heading 52:10 59:8 hear 12:14 12:15 47:17 69:13	heart 66:9 66:20 heavily 23:6 40:15 help 31:4 36:12,17 43:23 53:8 helped 35:25 helps 30:9 hereto 73:20 hesitant 43:6 hey 44:1 high-low 46:14 highest 33:9 Hillsboro 6:8 7:5 history 6:5,5 46:22 hit 44:9 51:14,15 51:22 52:6 hold 24:11 53:5 holding 19:2 23:10 39:22 home 11:11 38:5 54:15 horizontal 40:1 horrible 11:8 hospital 35:7 41:15 hours 70:3,7 house 11:10 15:18 24:23,24 31:13 32:11 37:21,24 40:25 41:3 52:10 55:1 55:3,7 65:4,24 69:5,12 household 9:13 housekeep... 45:6 hurting 29:6 40:7	<hr/> I identified 31:11 identify 14:2 identity 37:23 ilk 45:25 imagine 16:24 imbibed 38:12 immediate 60:13 immediately 17:18 23:13 59:17 60:19,22 impaired 7:19 impression 31:15 53:15 incident 3:17 4:23 9:9 26:1 27:17,18 41:25 42:3 49:23 50:21 55:9 55:10,13 63:23 65:14,23 67:11 70:6 include 68:3 68:8 includes 7:15 Including 8:17 independent 35:12 42:16 INDEX 3:1 indicate 27:14 indicated 43:21 68:12 individual 16:5 55:11 55:15 57:13 59:13,25 60:12,21	61:7,9 63:10,12 63:14 64:13,25 individual's 16:2,15 individually 37:25 individuals 11:5 31:12 31:13 38:10 43:3 56:5,16 62:23,23 63:1 64:21 inebriated 38:9 information 11:19,22 45:21 67:7 initial 5:5 21:11 41:5 41:19,20 42:18 56:21 57:6 57:24 58:1 58:3 61:12 62:16 initially 13:2 13:4 17:13 30:16 36:19 51:2 51:25 injuries 10:6 39:18,21 42:19 inmate 60:14,15 60:18 61:17 inmates 61:22 inner 56:25 59:21 71:11 innocent 31:5 input 5:6 inside 15:20 16:17 22:9 40:4 50:22 54:13 56:22 57:22 58:14	instance 15:24 60:20 instances 45:22 46:2 55:25 56:4 59:2,25 61:6,20 intending 41:22 interaction 37:16 64:12 interactions 64:3 70:15 interested 73:20 interior 37:21 interpret 7:17 interview 42:22 interviewed 43:3 intoxicants 38:21 introduce 35:4 investigati... 37:2 44:3 67:5,8 Investigati... 7:21 investigator 6:11 involved 31:6 47:24 59:2,5 61:17 involving 47:9,14 48:10 Iowa 6:7 irritated 29:7 issue 71:4,8 issues 35:23 66:4,19 items 69:12 <hr/> J Jacobs 2:7 3:5,13 4:5 4:8,22 5:8
--	--	---	---	---	---	--	--

5:15 25:24 26:8,16,22 27:1,6,11 32:3 37:8 38:16 44:5 44:10,15 44:22 45:1 45:5,14 46:6 47:19 48:1,9 49:12 60:23 61:24 63:5 71:23 jail 34:11,20 35:21 55:16 56:6 56:9,18 57:1,14 58:4,15 59:14,22 61:7,21 62:24 63:11 67:22,23 68:23 jailers 57:15 63:1,11 Jensen 1:4 4:11 9:13 9:22 10:20 27:18 29:1 29:6 31:10 31:11,17 31:18 32:17 34:6 34:19 35:6 35:23 37:12,15 38:20 39:10 40:24 50:22 51:4 52:11,17 54:12 65:25 66:3 66:9,16,19 66:23 67:8 67:21 68:23 69:16,20 Jensen-W... 4:19 Jerilyn 2:7 4:8 44:4	jewelry 56:23 job 6:2,6 39:15 Join 62:2 joint 71:9 jump 43:10 jurisdiction 37:1 43:22 43:23 67:4 K kicked 36:13 kicking 58:9 kind 11:3 27:15 32:20 52:16 kit 65:7,13 65:15,20 kitchen 55:6 kits 65:8 knead 36:13 knees 21:25 knew 34:18 know 5:12 10:20,25 11:12,14 12:9,17 13:10,14 16:7 21:8 21:10 26:2 26:4 32:22 34:24,25 38:8 42:12 42:20 43:10,23 44:6,15 47:5,11,12 47:12 48:4 48:8 50:18 51:4,7,25 52:1,5 53:8,12 60:4 62:25 63:15,20 66:5 69:11 70:5 knowledge 60:7,10 known 73:3 L label 11:2 Lac 6:12,18	Lake 6:9 7:1 landing 24:2 25:5,8,23 29:1,12 31:12 33:2 34:3 large 4:18 42:7 largest 25:4 lastly 31:6 late 9:16,17 LaValle 43:4 law 2:12 6:2 6:5,6 7:9 7:16 15:2 45:23 46:8 61:1 lawsuit 4:11 layers 56:23 59:19 layout 13:18 lead 43:24 learn 7:18 learning 7:16,16 64:3 leave 5:9 14:22 31:16 57:9 57:10 left 16:23 17:25 18:11 20:2 20:5 21:2 41:16 42:5 legs 18:24,25 20:18,23 22:1 let's 44:14 44:20 level 11:10 15:11 29:2 31:23 61:18 levels 11:10 lift 52:21 53:3 limit 46:19 limiting 61:2 Lindsey 2:3 2:4 3:6,11 5:2,3,13 32:1 38:14 44:17 49:15,17	49:20 60:8 60:9 61:4 61:5 62:6 63:9 71:1 71:19 72:6 72:7,10 line 16:10 33:22 lines 42:9 litigator's 44:9 little 10:11 13:13 22:11 24:16 29:15,17 30:1 31:1 64:7 loaded 34:8 37:17 locked 58:16 long 5:24 6:18,21,24 7:5 49:6 54:24 56:17 58:19 59:13 longer 44:7 look 12:5 20:16 23:20 28:10 32:21 35:11 39:24 42:10,11 45:6 49:9 looked 62:13 looking 20:8 26:15,17 40:12 55:23 lot 5:16 12:9 12:10 19:18,18 27:24 51:24 loud 12:15 low 8:24 lower 20:18 27:13 51:10 M	mad 53:6 magnitude 9:22 main 2:13 24:25 25:10 58:13 maintained 36:5 majority 4:18 making 14:22 19:19 37:25 male 10:14 11:18,19 manner 48:23 marked 26:3 material 52:7 matted 62:18 matter 32:9 Max 2:3 44:21 mean 20:11 22:15 63:16 meaning 20:7 means 73:15 medical 34:17 40:21 65:2 65:3,7 66:10 69:22,25 70:3 member 46:11 memorable 9:21 memory 28:8,14,19 42:13 62:7 mention 38:22 mentioned 5:15 42:18 42:20 60:2 met 4:8 11:17 56:8 62:12	Milwaukee 48:17 mind 10:11 27:7,23 minutes 44:10,14 44:18 45:2 missed 8:9 69:24 misspoken 42:24 misstates 61:25 mode 22:4 moment 27:15 29:9 29:14 34:2 42:11 momentar... 39:24 moments 69:3 Monday 70:7 mop 62:10 morning 4:6 4:7 35:11 move 39:23 58:16 multiple 13:6 58:10 mustard 48:20 N name 4:8,13 10:18 11:23 38:2 39:15 names 10:21 narrative 68:9 nasty 16:3 nature 11:9 29:8 39:18 necessarily 23:11 65:11 necessary 56:13 neck 20:4 21:3 51:11 51:22 need 31:2 44:8,16	58:19,20 60:19 61:19 72:7 needed 57:18 nervous 13:13 never 4:8 32:6 38:25 60:16 62:12 70:7 71:3 new 48:20 Nicole 43:4 night 4:24 34:16 38:5 38:7 41:18 42:25 49:22 50:19,21 63:22 65:14,23 non-aggre... 31:6 non-law 31:13 normal 35:17 normally 9:5 57:9,17 58:5 71:16 nose 40:2 Notary 73:6 notation 5:12 note 41:24 notes 49:9 71:18 notice 51:21 55:2 noticed 51:18 notices 26:14 Novak 32:13 34:22 36:3 36:21 37:23 number 10:12 14:6 14:6 numbers 27:13 nwcr@nw... 1:23	O oath 4:2 49:1 73:9 object 60:5 60:23 61:24 63:3 63:5 70:22 Objection 32:1 38:14 OBJECTI... 3:10 observe 39:18 observed 60:14 61:11 67:17 observing 60:11 OC 17:24 20:2 21:12 22:10 23:6 23:13,18 29:19,21 33:3,5,22 38:24 39:3 45:24 46:7 47:9,14,24 48:11,15 48:19 49:2 52:2 55:11 55:17 56:15 58:13,20 61:7,22 62:25 64:2 64:4,8,9 64:14,23 67:22 68:4 68:18 occasions 56:18 occupants 54:14 occur 59:13 occurred 6:16 9:8 27:24 31:20 32:24 odor 33:3 38:21 offhand 9:2 12:4 office 2:12
--	---	--	---	--	---	---	--

5:10 6:19 6:22 officer 4:6 4:23 6:7 6:13 7:4 7:21 8:15 8:20 15:17 25:13,25 32:12,12 34:22 36:2 36:3,21 37:1,23 48:5 49:14 49:21 60:21 61:8 71:24 officers 8:25 25:14,15 25:19 31:3 36:11,17 54:21 58:10,11 61:11,16 62:19 official 48:6 Oh 22:24 oil 69:8 okay 5:7 7:24 9:6 11:15 12:19 18:7 18:13,16 21:2 22:13 22:18 23:2 23:13 25:3 26:21 27:1 33:1 42:14 44:22 47:25 51:9 Olby 43:4 on-scene 44:3 once 24:1 25:12 28:17 37:15,17 41:19 54:16,18 54:18,22 57:13 58:14 68:25 one-second 20:1 21:12 21:21	ones 59:16 ongoing 7:24 open 16:17 17:5 18:6 22:8 30:5 30:5 34:18 53:24 70:3 70:5,7 opened 41:13 53:14 operable 50:6,15,19 operating 34:7 71:13 opinion 54:13 opinions 30:10 opportunity 28:10 59:15 60:3 opposite 54:1 order 6:15 14:13 25:16 35:19 Oreilles 6:12 6:19 original 3:21 3:22 outcome 73:20 outright 68:8 outside 15:19 17:25 18:2 18:4 23:14 24:2 25:1 29:13 34:1 58:4 60:7 61:23 70:11 overhead 34:12 56:11,14 62:20 overly 63:4 P p.m 72:12 packet 26:3 26:5,7	27:4 page 3:3 27:9,12,23 28:3,13,13 42:5,9 45:8 67:11 67:12,16 pages 27:8 27:14 painful 16:25 paper 72:7 paperwork 57:2,8,23 59:22 paragraph 28:1,4,12 32:20,20 32:22 67:14,16 paragraphs 42:7 part 20:5 24:23,23 24:24 50:7 56:19 57:1 57:2 58:4 58:13 59:22 63:20 69:24 part-time 9:1 partially 16:17 17:21 particular 43:5 parties 31:5 39:8 73:19 parts 20:19 20:21 passed 49:11 Paul 1:7 2:11 peel 62:14 people 10:12 10:25 11:20 41:18,20 47:13 48:4 64:15,16 pepper 17:24 19:12,15	19:16,17 20:2 33:6 45:24 47:9 55:16 67:22 perpetrator 10:23 30:25 person 10:19 12:14,23 13:7,8,11 13:13,16 14:2,5,13 14:15,17 14:18,20 15:8,8,14 15:18,20 15:23 17:3 18:17,21 28:17 31:8 31:10 34:8 34:10,13 38:18,21 57:18 58:5 58:10 61:12 65:16,18 personally 65:5 phase 59:3,7 photographs 37:22 42:22 photos 43:2 physical 10:5 16:11 physically 12:23 19:22 52:15 pick 53:2 pinned 16:18,20 place 24:4,5 35:1,19,20 58:3 placed 17:24 25:12 Plaintiff 1:5 2:6 plan 34:6 please 4:13 33:16 47:18 Pledge 18:11	plenty 44:25 point 12:9 12:11,19 15:2,16,17 16:4 18:17 19:11 20:15 22:7 24:15,17 29:3,13 31:10,17 32:6 33:1 36:16 37:19 47:11 52:15,24 53:6 57:16 pointed 28:18 police 5:23 5:25 6:7,8 6:12,13,14 6:24 7:6 7:15,21 8:6,15,16 8:20 46:11 46:20 48:18 70:9 70:19 policies 70:18 71:3 71:6 polite 71:12 Polk 6:10,21 poor 53:10 port 34:11 portion 11:13 55:3 57:8 pose 54:14 position 24:9 54:24 possible 34:14 potentially 60:7 power 44:14 prepared 42:2 presence 15:12 16:11 60:17 present 8:3 8:14 39:8 39:12 48:1	56:8,17 57:19 62:23 pressing 19:23 pressure 19:4 20:20 20:24 21:1 21:24 22:24 52:22 pretty 33:4 34:15 primary 28:17 36:25 37:11 38:1 43:22 67:3 67:4 print 26:20 73:14 prior 7:4 39:2,2 62:19 63:25 prison 8:9 8:10 private 41:10 probably 25:4 64:15 procedure 34:7 71:14 procedures 70:18 process 56:20 57:1 57:22 profile 20:7 20:9,12 prone 24:8 proper 70:18 protect 31:5 provide 6:15 11:19,22 65:2 provided 59:24 60:3 68:14 Public 73:6 pull 17:18 36:10 pulling 36:9	push 18:25 pushed 20:20 pushing 17:3 21:14 put 17:15 24:19 25:25 27:6 31:18 33:22 35:25 36:12 58:21 putting 19:4 25:14 36:4 47:24 Q question 27:16 28:7 29:4 32:2 35:3,3 38:15 45:9 45:17 47:18,22 51:20 53:10 62:3 63:16 66:8 67:13 68:3 71:5 questioning 5:5 questions 4:17,18 5:16,18 29:17 30:18 46:18 49:13,16 62:25 66:13 71:20,21 quick 35:11 quicker 37:4 67:9 quickly 34:8 37:13 quiet 13:4 R rag 40:5 range 46:14 reach 57:20 reaction 51:16,18	51:21 reactivated 30:15 read 7:17 28:3,6 42:14 readily 23:22 ready 29:12 real 62:9 really 44:16 46:3 55:20 55:23 56:2 reason 37:11 39:12 69:13 reasonably 34:9,14 58:19 recall 8:23 9:2,14,20 9:24 10:3 10:4 12:4 13:18,24 14:6 16:22 25:20,21 29:3,10 31:1 32:14 35:8,10,17 35:23 36:2 40:9,23 41:2,11,12 41:15,17 43:18 48:12,13 48:17 51:6 55:6,9,12 55:14,19 61:6,8 62:9 64:3 64:11 65:14,17 66:17,21 67:1,24 68:10,14 68:16 69:17 71:8 received 26:14 29:18,20 29:24 30:10,10 30:18 recollection 12:13 29:5
--	--	---	--	--	---	---	---

32:10,12	73:12	31:8	40:16	S	20:13,15	9:18	six 6:23 7:3
32:25	relax 30:4	reporter	restraints	S.C 2:4,8	20:17,18	shoes 35:24	8:17,22,25
35:12 38:9	relay 67:6	5:12 71:25	24:19	safe 31:3,4	20:19,21	35:25 36:4	Sixth 2:4
42:16 43:5	reluctance	72:6,9	25:12 58:6	34:9	22:9,9,10	36:12,18	slam 21:16
43:21	43:14	reporter's	58:15,23	safety 23:24	23:21	short-term	53:17,25
49:24 62:7	reluctant	26:11	results 22:10	31:7 36:15	39:25 40:8	30:12	slammed
66:1,25	43:7	reporting	retracted	sake 26:11	45:2 49:9	shot 51:14	16:18
69:19	remain 57:8	51:25	17:15,21	saline 69:9	50:6,25	shoulder	17:10
recollections	67:2	representing	retreating	saw 42:24	51:11	17:8,22	slamming
9:11	remainder	2:6,10,15	43:12	51:17	52:17,25	20:3,4,5	19:1 20:19
record 4:14	32:19	represents	retrieve	saying 35:12	53:19 54:6	21:3 51:10	slid 18:21,22
5:2 45:4	42:10	4:10	33:20	39:15 43:7	60:20	shoulder-n...	sliding 17:21
55:24	remained	request	return 16:3	43:12 44:1	62:15	51:16	small 8:12
73:16	54:24,25	59:23	39:10	68:17	seeing 21:6	shoulders	23:16 65:8
recorded	remember	61:12,17	returned	says 4:3 21:4	35:18 36:9	62:11	65:19,20
73:14	9:15,19	62:21	37:21 41:3	60:18	seen 31:16	shouting	smash 54:1
recording	10:5,7,12	requested	review 32:22	scenario	36:15 39:1	13:5	smelled
50:11	12:2 25:16	60:21 61:8	42:8	15:1	39:2 43:1	shower	23:17
recruit 7:14	35:25	requests	reviewing	scene 10:7	59:8,12,16	30:13	soap 69:9
Red 3:17	40:21 41:9	60:15	35:10	11:1 15:17	60:16,18	34:12	sober 64:16
5:23,24	41:13 49:1	requireme...	right 23:10	31:5 32:7	60:20	56:11,14	socks 36:1
6:13 8:6	62:4 66:7	8:4	26:22	36:25	61:23 62:5	57:4 58:19	solution 69:9
8:11 46:11	68:1	reservation	27:22	41:16	sense 54:11	59:10,10	somebody
46:20	remiss 46:17	69:23 70:1	33:22 38:2	43:19	67:2	59:17 60:1	12:17 35:6
69:22,25	remotely	residence	44:15 45:1	54:22 67:2	sensitive	60:13,19	soon 34:9,14
70:9,19	1:17 2:5,9	4:19 15:21	47:17	70:21	6:11	60:19,22	59:21
71:9	2:14 73:4	27:19	50:23	school 7:14	sent 26:11	61:9,23	sore 52:9
redactions	removed	resisting	51:19	scope 60:7	sentence	62:20	sorry 22:22
27:20	56:22	19:10,12	53:20 64:9	60:24	67:20	63:20	25:7 33:16
redirect	58:16	21:14	67:18	scrape 40:6	sentences	68:15	37:6 47:15
41:24	59:18,19	22:21,23	right-hand	42:20	28:5	showering	50:7 69:24
71:23	repeat 37:6	respiratory	27:13	scratch 40:6	Sergeant	61:15	sounded
reduced	rephrase	49:3,4	rinse 62:20	scrub 58:17	4:10 32:10	shut 17:10	14:10
73:14	60:8 61:4	52:1	63:20	58:17,17	36:3,23	53:17	Sounds 45:1
referring	71:1	respond	road 8:10	search 59:20	37:15	54:25	South 2:8
55:13	replaced	14:5 70:20	role 57:16	searched	40:24	sic 43:4	speak 43:9
refreshed	50:16	70:25	room 5:11	59:18	43:19	side 20:13	43:13 72:3
28:19	report 3:17	responded	13:21,25	seat 54:16	66:15,18	27:13 40:2	specific
refreshment	4:21,23	50:20	15:11,12	second 4:25	66:22,23	40:2 54:1	43:18 48:3
55:12	5:17 7:22	responders	16:10 18:1	20:1 21:19	67:1,20,24	signature	49:24
regarding	9:9 12:12	40:21 41:4	18:2,5,9	26:19 27:3	68:10,22	45:10,15	63:15
5:19 29:18	19:25 26:1	responding	18:14,17	28:3 55:8	69:11,15	45:16,18	64:11 66:1
29:20	26:24	9:14	18:21 22:6	58:24 59:9	seriously	similar	66:7,10
32:24 42:3	27:17,21	response	24:25,25	67:19	32:5	29:22	68:19
48:14	32:20	9:22 14:1	25:4 33:8	71:18	set 56:12	48:23 49:2	70:10,14
61:22	38:22	19:14	33:13 44:9	secondary	seven-page	71:3	70:17 71:6
66:13	41:14,25	35:17 64:1	58:25 59:9	59:5,15	27:12	single 27:8	71:7,11,15
70:15 71:8	42:2,11,21	71:9	rooms 13:18	secondhand	shampoo	45:8	specifically
regardless	55:24	responses	25:2	67:7	58:18	sit 32:24	29:11 50:2
63:17	67:11 68:4	30:19	RPR 1:20	secure 58:4	sheriff 1:7	site 65:4	69:18,19
related 9:23	68:9	rest 57:23	73:23	secured	4:10 71:10	sitting 50:25	71:8
73:19	reported	restate	rubber	54:12,18	Sheriff's	53:19 54:7	specifics
relating	10:6 37:24	47:18	58:12	54:22	6:10,22	situation	68:1
70:14	67:20,24	51:20	run 46:17	see 13:3	70:12,20	15:6 30:24	speculative
relative	reportedly	restraining		14:14	shift 9:16,16	62:8	63:6

spitting 58:8	staffing 8:23	59:23	31:19	10:25	11:4 12:6	19:10 23:4	tribe 69:22
split-level	9:3	stepping	Suite 2:8	41:21	25:21	35:6 47:8	69:25
11:11	stairs 13:22	44:1	superiors	43:16	26:13	59:9 60:17	Tristan 1:4
spoke 38:22	25:5,8,10	steps 30:23	48:9	talked 12:6	33:24	towel 33:20	4:11 10:19
41:18	36:14	68:19,24	supplies	29:14	38:22	57:20	11:24
spray 17:25	stand 23:4	stinging	65:7	48:10	40:25 51:7	towels 23:21	28:19
19:12,15	52:12,12	29:7	sure 20:13	talking	52:20 56:1	69:6	67:21
19:16,17	52:18,20	stood 53:7	26:24 31:2	29:10	66:5 71:17	traffic 7:18	true 73:16
20:2 21:8	52:25 53:2	stop 5:3 17:3	37:25 38:1	60:25	third 9:17	trained	truth 73:11
21:12	53:7,9,13	19:10,11	47:15,19	target 21:21	27:9	29:25 32:6	73:12
23:13,18	standard	21:13,14	58:3	taught 15:5	thoroughly	48:14,18	try 15:7
29:19,21	34:7 62:25	stopping	Susienka 1:7	31:2	57:5 59:18	63:16	16:10 17:5
29:22 33:3	71:13	40:3	2:11 4:11	tell 5:21 7:12	thought 8:11	training	17:9 30:2
33:6,23	standing	stories 37:25	suspect 16:8	14:8 20:25	26:12	5:18 7:9	30:3 58:10
45:24,24	51:1 53:16	story 41:20	suspensions	33:5,11	threat 54:14	7:25 8:3	trying 11:2,2
46:7 47:9	53:19,22	straight	46:24	38:18 39:6	three 8:24	15:3 21:4	11:4 13:12
47:10,14	54:7 57:17	13:22	Swan 1:8,14	68:13	9:3 11:25	29:15,18	15:8,14
47:24	start 28:16	14:11 20:8	3:4 4:1,6	69:18,19	12:10 38:8	29:20,24	24:4,7,7
48:11,15	30:21	straightened	4:15 49:14	telling 14:17	55:14 72:9	30:10,18	32:16 35:3
51:5 52:6	53:22 71:2	18:24	49:21	14:21	throwing	30:21,22	36:10,12
55:11,17	started 6:6	street 2:8,13	71:24	terms 11:7	54:2	48:17 49:6	41:9 48:21
55:17 61:7	7:22 15:22	29:2	72:11 73:4	30:19	time 7:8,24	64:2,8,8	52:20 58:9
61:22	22:1,13	stretch 44:8	Swan's 4:23	33:20	8:22 10:2	64:11,18	tub 54:4
62:25 64:2	39:11 52:8	strike 11:7	25:25	Terri 1:20	10:18,20	64:20	turn 37:19
64:5,8,9	52:21	24:17	sweep 24:10	4:3 73:23	17:12 18:1	70:10,14	39:16
64:14,23	53:23	64:19	sworn 4:2	test 48:19	18:3 19:15	70:17,25	57:13
67:22	starting 15:7	70:16	73:11	testified	19:17 20:6	71:6,7,15	67:12
sprayed	22:11,11	striking 19:3	system 8:9	34:15	21:10,19	transcript	turned 63:2
21:19	41:5 42:8	strong 38:20	8:10 49:3	50:22 51:3	22:19	3:22 72:1	two 7:7
29:10 51:3	52:8 53:5	strongly	49:5	51:7 56:2	23:23	72:3	11:10 24:1
52:6 55:16	starts 28:2	23:17	T	testify 73:11	25:17	Transcript...	25:15 27:8
62:24	28:12	struck 40:15	T 2:3	testifying	32:13 33:1	73:15	28:5 32:15
63:12,13	67:16	struggling	take 9:6	51:6 73:10	34:5,18,23	transfer	42:6,9
63:17	state 4:13	24:6 36:9	20:20	testimony	34:24	41:1 66:23	type 49:21
64:13,15	10:9 19:25	subdue	22:11	60:6 61:25	35:14 36:7	68:23	50:10 58:2
64:22	73:1,7	22:17	23:20 24:8	73:13,17	40:23 41:7	transferred	62:8 65:6
69:16,20	statement	subject	24:9 30:23	Thank 27:22	41:23	40:24	66:10
squad 34:8	25:25 26:6	16:17	32:21	49:13,17	46:20	transpired	typically
36:19	43:17	23:24 24:4	39:24	71:23	48:13	4:19	50:10
40:24	statements	61:7 62:9	41:21	Thanks 45:3	49:13,25	transport	U
51:19,23	38:6,7	subjective	42:11	theory 31:18	50:13,25	34:10 37:3	uncovered
54:16,19	STATES 1:1	52:16	43:24 44:7	thereof 73:8	51:5,8,13	41:14 44:2	39:25
65:6	station	subjects	44:11,16	thick 23:13	54:11 55:9	56:7 67:6	undergo 7:9
squads 65:8	34:12	48:20	44:20,22	33:4	57:9,12	transported	understand
65:9	56:11,13	submitted	51:17	thickest	65:9 70:5	31:21	36:8
St 73:2,7,23	61:14	50:6	59:16	33:15,17	71:24	34:19 41:8	understan...
Stacken	62:17	subsequent	taken 1:15	33:23	times 13:6	41:10	10:17 16:4
1:20 4:3	statutes 7:17	59:3,6	1:20 22:24	thing 26:13	46:8,10,15	56:16	32:23
73:23	stay 30:3	successful	35:6 36:22	42:17	title 8:14,19	trapped	47:19
staff 8:18,22	31:3,4	16:1,14	37:22 56:9	52:16	today 4:16	17:14,15	68:24
38:3 50:14	43:8	sufficient	57:3 62:18	things 5:18	32:24	17:19 19:6	understood
56:9 57:19	stenotypy	57:7	68:25	10:9 29:25	35:13	treat 5:10	15:22
57:23	73:14	suggesting	takes 58:3,9	35:1 36:25	told 11:23	64:21	33:14
60:16	step 16:16	67:1	talk 10:19	40:8 54:8	12:18,22	treated 38:3	36:24
67:22	29:14	suggestion		think 10:23	13:11	Tribal 6:12	

underwent 7:8	19:14 43:17	13:15 43:7 43:8	58:11 65:25	43:15 writing 7:22	20-CV-99... 1:6
unit 61:23	verbally 21:13	warned 19:9 19:16	wedge 17:4	written 38:6 38:7 46:21	20-plus 61:1
UNITED 1:1	verify 27:17	warning 21:19	wedged 18:23	wrongdoing 47:7	2012 49:7
units 50:16	victim 10:24 30:24,25	wasabi 48:20	went 12:4,5 12:6,25	www.nwco... 1:22	2013 49:7
unkept 62:11	38:1	washcloths 23:22	13:22	X	2019 4:20
unknown 47:20	victims 37:24,24	Washeski 38:2 39:17	28:16	Y	8:19 9:4,8
unsteady 39:4	video 35:11 35:15,18	41:6,7	41:10,15	Yeah 7:2 44:5	27:19
untrapped 17:6	50:10	42:19 65:2	69:2	years 6:1,20 6:23 7:3,7	55:10
up-to-date 8:3	view 20:9,12	washing 61:15	weren't 49:21	7:25 8:24	2022 1:15
upgraded 50:17	viewing 38:4	wasn't 16:24 20:8 22:16	West 2:4,13	9:3 12:10	73:4,21
upper 17:7	Village 6:9	22:18	WESTERN 1:2	38:8 55:14	220 2:4
17:22 18:5	violence 30:20	23:10	wet 58:11 62:18	61:1	24 70:3
18:14,25	violent 12:23	54:21 71:5	whatnot 30:15	yous 19:19	25th 4:20
20:23 21:5	violently 24:6	watched 35:15	WICKMAN 2:3	Z	9:8 27:19
40:7 42:20	virtue 73:8	water 30:8 31:21	Wisconsin 1:2 2:5,9	Zoom 1:17 2:5,10,14	3
upstairs 11:25 12:4	voice 13:5 14:9,10	33:20	2:14 6:8	72:11 73:5	3 3:17 26:3
12:6,7,16	22:5	34:13 44:8	7:6,10,15	0	27:5,7,23
28:16	volume 9:20	62:16	8:1,8 73:1	1	28:13
31:16,22	voluntarily 14:24	watering 33:10	73:7,23	1 26:3 27:4	67:12
34:1 55:3	volunteered 36:24	watery 38:23	witness 2:15 28:9 43:11	27:14 45:6	32,38 3:11
use 7:19	48:22	40:13	73:10,13	45:11,16	4
16:11 17:8	VS- 1:6	wave 43:10	73:17	1-800-628-... 1:24	4 3:5 28:13
19:12,15	W	way 9:18 11:4 12:24	40:19	1:08 72:12	42:5,9
19:16	waiting 57:21	21:20	words 12:2 43:20	10 44:8,10	67:11,12
24:10 47:9	walk 5:17 9:9 20:13	22:25 28:6	68:13	44:13,18	4:14 26:17
48:11	32:19	41:15	work 9:5 15:10,13	44:24 45:2	49 3:6
56:14	walked 23:9 27:24	63:16,19	70:13	10- 44:22	5
58:18 64:2	32:14	64:18	71:12,16	10-29-2022 73:24	54701 2:9
64:4,24	33:13,25	67:10	worked 52:11	106 2:13	54806 2:5,14
65:9	want 9:6 27:8 30:13	ways 31:19	working 8:8 8:9 26:10	120 2:8	6
usually 10:23 47:5	30:17	9:9 30:21	26:25 31:3	15 44:18	60,61,63
58:7	32:21 34:2	32:18	70:10	15-minute 44:23	3:13
utility 13:21	39:14,16	we're 5:10 33:1 34:9	Works 44:24	15-plus 7:25	60,62,63,70
V	44:19	38:8 59:22	worry 31:7	18th 73:21	3:12
V 18:7	45:20 54:5	63:16	wouldn't 10:18	1981 6:6	7
vague 63:4	58:18 72:2	8:24	27:23	2	7 2:8 27:14
vegetable 69:8	wanted 8:10 9:10 39:10	wear 50:10	wrist 18:4 53:4	45:13,17	7th 1:15
vehicle 41:10	68:3,5	wearing 36:1 49:21	write 38:7		73:4
54:13,23	wanting				
65:12,15					
66:24					
verbal 15:7					
15:22 17:2					